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Bernard Bailey

Mary Lord Harrison

A Merry Christmas

to

Uncle John

1901.

# VIEWS

OF

# AN EX-PRESIDENT

BY

BENJAMIN HARRISON

BEING HIS ADDRESSES AND WRITINGS ON SUBJECTS
OF PUBLIC INTEREST SINCE THE CLOSE OF
HIS ADMINISTRATION AS PRESIDENT
OF THE UNITED STATES

COMPILED BY

MARY LORD HARRISON

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# VIEWS OF
# AN EX-PRESIDENT

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# PART ONE

# THE DEVELOPMENT OF THE NATIONAL CONSTITUTION

## INTRODUCTORY LECTURE

**Delivered at Stanford University, March 6, 1894**

When I yielded to the request of Governor Stanford and consented to deliver some lectures before the students of this university, I confidently expected that he would be here to give me that stimulus and encouragement which a genial and familiar face, reflecting a friendly approval that does not wait upon performance, affords to one who enters upon an unaccustomed work. As we shall, on the ninth instant, observe the anniversary of his birth, I will reserve for that occasion my tribute to the virtues of a friend whose death I now first realize, because he is not here.

I am glad to have even so slight and casual a part as that of a non-resident lecturer in the work of this young but already great university. If my presence is only occasional, and my contact with these eager minds and generous hearts less

near and constant than I could wish, I must the more be careful that whatever direction I may give to your thoughts and whatever impulses I may kindle in your hearts shall be true and elevating—though they be small.

The lectures which I contemplate will be rather popular than technical—especially while we have under consideration the constitution of the United States, and the history of its development and adoption.

If the national constitution were in fact what Mr. Gladstone described it to be—"the most wonderful work ever struck off at a given time by the brain and purpose of man,"—the work of the commentator would be abbreviated, if not simplified. He would not need to go back. It was, however, not a work struck off at a given time; but, in a strong sense, a development—the ripe fruit of experience, and not a discovery, not a revelation. The harmonious adjustment and definition of the powers of the national and of the state governments was more nearly than anything else original and constructive work. As a whole it is, perhaps, more nearly, though not altogether, what Mr. Gladstone described the British constitution to be, "an organism which has proceeded from progressive history." This being true, we can not rightly estimate the merits of its framers, nor rightly understand its articles without some knowledge of

the historical progression which culminated in this admirable and enduring civil organism. I can not, however, in these preliminary lectures, do more than give you a hasty and not very closely connected outline of those events and civil contentions which, beginning in old England, resulted first in the establishment of popular governments in the colonies and states and finally spread over these necessary and inestimable local systems a national popular government—supreme in all things affecting the common interests of all the people.

My aim is not so much to make lawyers as to promote a broad and intelligent American citizenship. Our civil institutions are safe only while in the keeping of a generation that loves them; and the love of institutions—however it may be with another sort—must be educated. We guard and keep our treasures—that which is not valued we suffer others to take without resistance.

It will be my purpose to show you the beauty, strength and adaptation of the constitution of the United States, and thereby to make your love of our institutions deeper and more intelligent. I will not ask you to love everything that is American; but I will ask you to shun the example of those who love anything for no better reason than that it is not American. American history and biography have had a great revival in these centennial years, and every young American should eagerly

avail himself of his improved opportunities to become acquainted, not only with the great events in our history, and with our great men, but with the connecting chains of small events and with the characteristics and virtues of the inconspicuous but sturdy people. It is not my purpose to describe what an alliterative friend of mine called the "prenatal prophecy and preparation" of our country. A study of English history and of the English constitution will greatly aid your understanding of our colonial history and of the development of our national and state constitutions; but I can not go very far into that field. The English constitution is not, as you know, like ours, a written instrument, containing a formulated system of fundamental law, of permanent and paramount obligation, apportioning the powers of government and providing particular methods by which amendments may be added. England has no such written document. The word "constitution" is there used in its wider sense, to indicate a civil system and order defined partly by writings, as the *Magna Charta,* but chiefly by long-established usage, and recognized precedents. The limitations of the powers of the sovereign, and the rights of the people are, however, pretty well defined, and very jealously guarded, though they are without codification. We have become so accustomed to a book—to article and section—that we have all

but lost the wider and primitive meaning of the word "constitution" as applied to a state. It would be impossible, I suppose, for a convention of the publicists and statesmen of England to codify the English constitution to the acceptance of the crown and of the commons. The powers of the crown, though they now give little trouble in practical administration, are hardly capable of an acceptable definition. The codifiers would be compelled, I suppose, to write that the prime minister is appointed by the crown, if they followed the letter; but if they recorded the fact, they would write that he is chosen by the majority in the house of commons. And if they should attempt to define the method of expressing that choice, they would find it impossible to be precise—for the party leader, who must be prime minister, is not selected by ballot.

We have just now an illustration of what I have said. Mr. Gladstone has surrendered the privy seal and his position as prime minister in the English cabinet. Lord Rosebery has been called to take his place. There was no formal vote in the house of commons. He was pointed out as the most conspicuous and acceptable leader of that party, after Mr. Gladstone; and so was chosen by the queen. Perhaps she would have preferred, if she had acted with absolute freedom in her choice, to have called Lord Salisbury to be prime minister; but the precedents would have

been so rudely violated by such a choice that trouble would have ensued for her. Therefore, her choice in the selection of her prime minister is not free. He is chosen, as I have said, rather by the assent—though without formal expression—of the majority party in the house of commons, and holds his place, as you know, subject to be surrendered whenever a majority in the commons fails to sustain any measure which he has proposed.

It was quite impossible to organize the American Union without a written constitution. England has been described as

> "A land of just and old renown,
> Where freedom broadens slowly down,
> From precedent to precedent."

But the organization of the great republic was a work of exigency. When government by the king and the parliament was overthrown, and the sovereign power seized by the people, bills of rights, an apportionment of the powers of government between designated officers, and popular elections, had all to be put upon a defined and permanent basis. The colonial charters had familiarized the people with the idea of written civil compacts and guaranties; and the frequent invasions of their charter rights by the king and his governors had taught them the value, nay the necessity, of strict written limitations of the pow-

ers of public officers. Precedents had been denied or distinguished—there was need of a book. And, if it was reasonable and necessary that the colonies, in becoming states, should substitute written constitutions for the old charters, much more was a written constitution inherent in the proposition to form a permanent union of the states. The broader freedom and the new civil organization could not wait to be fully defined by precedents—a declaration and a constitution were demanded.

The transition from colony to state was not difficult, nor very radical in form. Little change even in the official nomenclature was involved. There were still governors, councils or senates, assemblies, judges and sheriffs. But none were any longer such by the gracious designation of His Majesty, and bound by oath to his service, but by the free choice of the freemen of the commonwealth, whose servants they were. The powers of the legislatures were merely enlarged to include some powers before exercised or claimed by the British parliament. The revolution was, in the states, chiefly in the source of the governing powers. But the institution of a national government was, both in form and substance, more a work of construction; and the difficulty and delicacy of the task can not be overestimated.

The national union, under the constitution, was

freely instituted in one sense; but in another sense, and very truly, it was the product of coercion —the imperious coercion of conditions. Not only the guiding, but the compelling hand of Providence was needed. Every other way had to be closed up. The selfishness, the petty jealousies, the baseless forebodings, that opposed, delayed and almost defeated the movement for an adequate general government, have saved the men of that generation from deification, and have established the legitimacy of the statesmen of our time.

The declaration of independence and the national constitution will hold their pre-eminence among the notable and influential acts in human history, and the men who framed and promulgated them will have increasing estimation and respect. But George Buchanan, and other prophets of liberty, had already announced the doctrine that the people were the ultimate source of the magistrate's power, and that the state was instituted for their good. Freedom of conscience and of speech and the right of the individual to the pursuit of happiness, were discovered truths; but they were in bonds and under suspicion. The declaration of independence eloquently and boldly proclaimed them. The new philosophy of human freedom was to be made a fact; a decree to take the place of philosophic musings.

When we come to consider the work of the constitutional convention we shall see that its mem-

bers were not all wise, nor any always wise—Washington more nearly than any other. The instrument was a compromise—the product of the average sense of the convention. Its framers found suggestions, or warnings, in the feeble and temporary European federations that preceded our union; but there was among these no satisfactory model. What was to be provided for, and against, was mostly suggested by the experiences of our English ancestors and by our own experiences during the colonial period and under the articles of confederation.

The suggestion of a union of the colonies for special purposes was much older than the suggestion of a separation from the crown. A brief study of these experiences, of these plans of federation, of the colonial charters, and of the first state constitutions, will greatly aid us in understanding the national constitution; for it was largely evolved from them.

The people of the United States were a nation before they were aware of the fact, and before they ratified the compact of government. There were diversities of race, of religion, of pursuit, of interests; but the colonists had ceased to be Englishmen, in the island sense, before the new oaths of allegiance were taken. The American antedates Concord and Lexington. Neither Canada, Florida, nor Louisiana was then fitted

for partnership in an American federation. The people of those colonies spoke a different tongue; had no *Magna Charta* in their history, and had not been exercised in local government or in religious freedom. In the colonies that became American states the English language was the language of the people, and the non-English admixture (the Scotch, Dutch and Huguenot) was of adaptable stock and had, before the revolution, been pretty thoroughly assimilated. All these were men who had the habit of thinking for themselves, and who valued themselves—two essential traits of a republican citizenship. Not parallels of latitude or longitude, not the channels of commerce, not bays, or lakes, or rivers, or mountain passes, determined the area and configuration of the new nation. The lines were run to include Anglo-Saxon freemen, and their allies from France and Holland and other lands, who had felt the hard hand of oppressions, received the new gospel of liberty, and now waited in faith for the institution of a free state in which religion should be a matter of conscience and not of legal decree, and the value of a man no longer a matter of ante-natal assignment.

Homogeneity is the essential of a true commonwealth. A common language, common hopes and purposes and interests are its progenitors. I do not mean that all hopes and purposes and interests, great and small, must run in parallels. If

that were the condition the state would be small and its people few. A safe and enduring state is assured when the large dominating hopes, purposes, and interests of its people are common. The struggle between the small local interests of the colonies and the large and enduring benefits of a union was fierce and long, and to human thought doubtful. Some caught the glory of the coming day, and its light made them blind to all small things; and for the majority there was the inexorable alternate—a union with national powers, or the speedy resumption of a foreign domination made more cruel by resistance.

Some of the influences that made the American citizen should have our attention. And first, I remark, that if a free government is to have stability—endurance—its citizens must give their love and allegiance to institutions, to principles, to constitutions, rather than to leaders. And herein is very largely the explanation of the stability of the American union, its comparative exemption from domestic insurrections, and its absolute immunity from successful revolutions. Our Spanish-American neighbors on the south are lovers of liberty; they are brave and spirited; but they have not learned to value civil institutions. They follow a cockade rather than a constitution; and the sad result is that revolution succeeds revolution, and their great resources lie undeveloped. Not so the An-

glo-Saxon; for here, men may come and men may go, but they can not break the fast hold of the citizen upon the established civil status. He follows a man only when the man stands for a cause; and loyally abides the judgment of appointed tribunals. All of the conditions that surrounded the American colonists tended to strengthen this inherited characteristic. They fled from oppressive laws. They came not to crown another king, but to build institutions. Their religion tended to creeds, and their politics to codes; and a sturdy democracy characterized both.

Mr. Grote attributes to the Greeks that love for a constitution rather than a ruler which is characteristic of the American. He says:

"But in the mind of every man, some determining rule or system—something like what in modern times is called a *constitution*—was indispensable to any government entitled to be called legitimate, or capable of creating in the mind of a Greek a feeling of moral obligation to obey it. The functionaries who exercised authority under it might be more or less competent or popular; but his personal feelings toward them were commonly lost in his attachment or aversion to the general system."

And Joseph Warren, in his Boston oration, in March, 1772, said: "So long as this noble attachment to a constitution founded on free and benev-

olent principles exists in full vigor in any state, that state must be flourishing and happy."

The religious faith and practices of the people also exercised a strong influence in developing the American love of institutions, and in freeing men from subserviency to leaders. The pastor was given great deference, even reverence; but only as the expounder of the written Word—the Word and the Church were before him and would be after him, and only to them was allegiance given. In the New England colonies this influence was dominant. Christ individualized men and endowed them. He introduced a new standard of valuation. That every man is possessed of an immortal spirit of equal value in the sight of God, is a leveling doctrine as well as an elevating one. Caesar was to have the things that are Caesar's; but the limitations were very strict—there were things that could not be rendered to Caesar. The humblest of the king's subjects was a brother to be loved as himself. A king was a servant. The state bore the sword for the defense of innocence. The ruler must answer to the Great King. So the divine right of kings became the divine obligation of kings. The man for whom the Son of God died upon the cross, for whom the material universe had been builded, fitted and adorned, must not be enslaved and degraded. Not Plato, nor Buchanan, nor Locke, but the Word, read with reverence daily in

the household, and expounded in the sanctuary, was the chief instructor of the body of the colonists in the theories of popular rights. They were iconoclasts, but of a discriminating sort—men who did not destroy for the mere pleasure of destroying, but to make room for better things. Independency of thought is the first requisite of the responsible citizen. Individual independence necessarily precedes community independence. The free man came before the free state; and the free state will not survive him. Religion had a mighty hold upon the men who wrought out our freedom and molded our civil institutions; as the public fasts, thanksgivings, prayers in congress and the legislatures, and the reverent appeals and strict injunctions to religious duty that abound in the military orders and in the correspondence of Washington, very fully show. There had been bigotry, narrowness, even cruelty, in the colonial churches—it was hard to unlearn the old lessons. But the idea of the nobility and freedom of the individual was there, and charity was fast widening this thought to include the other man. The man's estimate of himself and of his rights was clear and strong. He only needed to be taught that other men's rights were quite as sacred and quite as clear.

Mr. Frothingham says: "This people—a new race, molding their institutions under Christian influences—were fixed in the traits that characterize

Americans. Without the infection of wild political or social theories, they were animated by a love of liberty and a spirit of personal independence unknown to the great body of the people of Europe, while at the same time recognizing the law which united the individual to the family and to the society in which he is appointed to live, to the municipality and the commonwealth which gave him protection, and to a great nation which met and satisfied the natural sentiment of country."

Like the pioneer miners in your California gulches, the colonists organized communities and made laws adapted to the local needs. No Cortez or Pizarro led our colonists in plundering crusades, or organized their defense against savage neighbors. They were not gold-seekers, but home-seekers. They came in families, and were thoughtful of posterity. They sought a country—a better country than that from which they had come out—a country not only to live and die in, but to live and die for. The Puritan home life was austere; but those homes produced men and women whom no threat or danger could move from their convictions, nor any master enslave.

England threw her colonists much upon themselves; and the savage effectively co-operated in developing them into strong, self-reliant men. Both were cruel teachers, but the product was that high type of American manhood that finally overcame

both. Then men and women who came to these distant and dangerous shores were individualized by the very act of coming; and every incident of pioneer life had the same tendency. The savage introduced a new human valuation that took no account of titles or ancestry, but only of achievement —the leader was the man in front. The Indian wars exercised the colonists in arms; introduced into every cabin an effective weapon, in the use of which even the boys became skillful. During the French and Indian war the colonies furnished twenty-five thousand men to the English army. The foot of the hunter was free; for there were no game preserves or game-keepers in the American forests.

The "frontier" has now disappeared; and the loss of it is a calamity. It meant cheap or free lands for the landless—adventure for the restless, a new chance in life for the beaten, a school for the development of a free, unconventional American manhood and womanhood; the exercise in government and public affairs of our ambitious young men—the healthy distribution of population—the preservation of the revolutionary type of men; for the men of '76 were frontiersmen.

The Indian also mightily stimulated the community idea. Organization, the next lesson in our civil development, he enforced under frightful penalties. Every man a neighbor, and every man his

neighbor's keeper, was the condition of existence in the feeble and exposed settlements. The town meeting for consultation, and the village block-house for defense and safety, were the kindergartens of the republic. In the town meetings the man who had something to say was heard, without waiting for his "betters"—though he were only the cobbler or a truant boy who had seen the prints of moccasins in the adjacent woods.

Life and living were reduced to their simplest elements; and, in the northern colonies, the long, severe winters, and the ungenerous soil, conditioned both upon industry and an economy that was near to parsimony. Men who conducted their households upon lines of the strictest economy were sure to be watchful of public expenditures, and resentful of the smallest exaction that was not supported by a public necessity, and laid by lawful authority.

Public assemblages of the body of the people, an indispensable incident of free government, were practically coincident in time with the landing of the colonists. They did not have their origin in any study of the rights of man, or of the theories of free government. They were spontaneous; they grew out of the situation—as naturally as ploughing and seeding. What more natural than that these infant communities, finding themselves without recourse to the old sources of civil authority

and direction, and feeling the necessity of concurrence in and submission to some rules of order and living, should assemble the whole body of the people for deliberation, and give the sanction of the free concurrence of all, or the controlling weight of a majority, to rules that were to be binding upon all. Especially was this natural to Englishmen. Guizot says: "When there scarcely remained traces of popular assemblages, the remembrance of them, of the right of free men to deliberate and transact their business together, resided in the minds of men as a primitive tradition and a thing which might come about again." The town meeting was adequate when the subjects to be dealt with were of a municipal character. But, as settlements were multiplied and common interests were developed, representative assemblies, composed of chosen delegates from the towns, were needed, and the need produced them. Professor Seeley says the colonial assemblies "were not formally instituted, but grew up by themselves, because it was in the nature of Englishmen to assemble."

The threat of tribal attacks drew towns and even colonies into consultation and co-operation. The first union among the New England colonies, made in 1643, recited that "Whereas we live encompassed with people of several nations and strange languages which hereafter may prove injurious to

us or our posterity. And forasmuch as the natives have formerly committed sundry insolences and outrages upon several plantations of the English and have of late combined themselves against us * * * We, therefore, do conceive it our bounden duty without delay to enter into a present consociation amongst ourselves for mutual help and strength in all our future concernments." They did not await the approval of the crown. Edward Winslow well said: "If we in America should forbear to unite for defense against a common enemy till we have leave from England, our throats might be all cut before the messenger would be half seas over."

Nearness to the savage and remoteness from England were both favoring conditions in the development of a hardy citizenship and of the great republic. If our ancestors had found this continent unpeopled and the ocean passage had been what it is to-day, how different the story would have been. Necessity, rather than philosophy, was their instructor in civics. The colonists could not know in time the pleasure of the crown, and so they pleased themselves, and the habit grew. In the absence of the anointed ruler, a count of hands was a natural suggestion.

Our ancestors in older England had possessed, in the hundreds, shires and counties, some powers of local government. These had largely been as-

sumed by the crown, but the tradition of them and the inherited adaptation to their use were in the minds and blood of their descendants. The compact of government made on the Mayflower is said to have grown out of the mutinous disposition of a few persons, not of the Leyden church, and probably servants. The Pilgrims had embarked under a patent from the Virginia Company, and these ill-disposed persons insisted that if the proposed landing, outside of the limits of that company, was made, they would be under no legal restraint. The emergency was met by the "solemn covenant" whereby they combined "into a civil body politic for our (their) better ordering and preservation." "And by virtue hereof," they said, (we) "do enact, constitute and frame such just and equal laws, ordinances, acts, constitutions, and officers, from time to time, as shall be thought most meet and convenient for the general good of the colony; unto which we promise all due submission and obedience."

Here was an exigency. If the colonists had been of Spain it would possibly have been resolved by the choice of a captain, with arbitrary powers or by some bold spirit seizing the leadership; but they were Englishmen and protestant Christians, and so the compact of government was democratic. Of the Mayflower compact Judge Story says, it was, "if not the first, at least the best

authenticated case of an original social compact for the establishment of a nation which is to be found in the annals of the world." They did not announce any political maxims, as that civil government derives its "just powers from the consent of the governed," or that "all men are created equal"; but they applied them. The compact was introduced by the declaration that they were "loyal subjects of our dread sovereign Lord King James," and they at once applied for a charter from the crown. So far as they assumed general governmental powers, it was *ad interim*—until the crown should act. But as to local government—the ordering of things that required a particular knowledge of the needs and changing conditions of the community—the assumption was never intermitted, and local government was never wholly lost in the colonies.

A government by the English crown and parliament was, as to local and municipal affairs, not only incongruous but impossible. Things affecting the personal security, health and comfort of the people, must be committed in a large measure to local control. Local needs and conditions are so various that we have found it impossible for the government at Washington to legislate for the territories. Some general limitations, some provisions in the nature of fundamental law, have been made; but, subject to these and to the power of congress

to annul any territorial law—a power seldom exercised—it has been found necessary to give general legislative powers to legislatures chosen by the people in each territory. When a civil government was given to Alaska, the best congress could do—in the absence of a sufficient population to organize a local legislature—was to declare that the laws of the state of Oregon should be the laws of Alaska. This system of local control we have also perpetuated in the states. Cities, towns, counties, townships, school, and road districts, have many important powers given to them—some of them of a legislative character. No state legislature could satisfactorily determine all these matters—though each locality had its representative in the body, and its sittings were within a half day's travel of the people to be affected.

These adjustments and subdivisions of the powers of government are not so much of convenience of philosophy as of necessity. Consider then how impossible it was that the king and parliament could satisfactorily direct the local affairs of the colonies—three thousand miles, a six weeks' journey, full of discomfort and peril—no representation in the parliament—conditions that had scarce a resemblance to English life—needs born in a night and exigent as a savage war-cry—a king and parliament absorbed by European interests and intrigues, ignorant of American affairs,

and so selfish as to be unteachable and wholly unsympathetic—these were the conditions that, from the landing of the first colonists, were slowly, unconsciously, but inevitably, bringing to birth the Great Republic. As well might Gloucester fishermen attempt to make laws for a Sierra mining camp as the English parliament for an American colony.

A local control of local affairs is primitive and natural. Government was begun on that basis. The family, the original unit of human association, made its own rules of living; so the progressive forms of association—the tribe, the village, the city, the state, the federation—were evolved from dangers, ambitions, or needs, common to several families, tribes, villages, cities or states. The function of the state, whether single or federal, had to do with things of a general nature, of common concern to the families, or tribes, or states, composing it—such as war, peace, diplomacy. The English habit of local government was derived from the Teutonic invaders and conquerors. In Germany the community organization was called the "mark," and the town meeting, where the affairs of the "mark" were discussed and decided, was the "mark-moot." The conquest was so thorough that scarcely a trace of the Celtic inhabitants was left. The ground was made fallow for the unmixed planting of the civil system of the

German conquerors. Names were changed, but not the substance. The "mark" became the "tun" or "township", and the local assembly the "tun-moot". These free and full assemblages of citizens chose the local officers and selected and sent four representatives to the courts of the hundred and the shire. This old English term, the "hundred," became familiar to all of us—though, perhaps, not understood by all—when, during the civil war, we heard so often from General Grant on the James river, and the dispatches were dated "Bermuda Hundred." Mr. Fiske says: "In these four discreet men sent to speak for their township in the old country assembly we have the germ of institutions that have ripened into the house of commons and into the legislatures of modern kingdoms and republics. In the system of representation thus inaugurated lay the future possibility of such gigantic political aggregations as the United States of America."

The organization of our national government was possible only upon the basis of a reserved local control of local affairs; and the preservation of that system is essential to that popular content which is the only security for the preservation of the union. California and Maine could not be united under a government modeled on any other system. At the basis of this system is the palpable incongruity of including in the govern-

ing body those who have neither knowledge of nor direct interest in the matters to be determined. At another time I will speak of the complement of this truth—the exclusive control and direction of all general concerns by the national government. The one is as essential as the other. It is quite as, rather more, incongruous and intolerable that general concerns affecting the whole body of the republic should be controlled or unduly influenced by states or localities. If only such as are directly affected by the conclusions reached are to be admitted to the ballot and the conference, then *all* such must be admitted to a free and equal participation.

The colonists brought with them, not only their English traditions and instincts, but they stoutly claimed their English citizenship, and the liberties and personal rights that they would have possessed if they had remained in the old home. Many of the charters expressly preserved these rights. The first charter of Virginia, granted by King James, in 1606, declared that all British subjects and their children should "have and enjoy all liberties, franchises and immunities, within any of our other dominions, to all intents and purposes, as if they had been abiding and born within this our realm of England, or any other of our said dominions." The charters of Connecticut, Georgia, Mas-

sachusetts, North and South Carolina, and Rhode Island contained similar provisions.

But these rights were not well defined at home. Some of the liberties that had been wrested from the crown had been resumed. The English constitution, during the colonial period, was not only unwritten, but undeveloped. The contest in the colonies was partly concurrent and on similar lines with the struggle of the English people against kings who sought to attain absolute power. The rights of Englishmen, the powers of parliament, the limitations of the king's prerogative, were yet to be defined and adjusted. The present magnificent English constitutional government was in growth; but it had not yet attained form and strength in its native soil, and was not ready for transplanting. And, besides all this, the widely different conditions prevailing in the colonies, as we have seen, required modification and adaptation at the least. Self-governing, prosperous, loyal English colonies now exist—the fruit of a defined and liberal home constitution, and of the disastrous failure of the attempt to enslave her greater colonies—but they were impossible to that generation.

One most important principle had, after centuries of struggle, been established and set in the English constitution, namely, that revenues were not to be levied at the king's pleasure, but granted by a body more or less representative of the peo-

ple. The representation was sometimes, as to many, theoretical rather than actual—of classes rather than of the body of the people; but the principle that individual property could not be taken for the public use, except by the vote of a body more or less fully representative of the tax-payer, had triumphed and the invasions of it by the king were becoming less frequent and more perilous.

There was a long period of English history that was characterized by successful aggressions on the part of the crown upon the rights of the people and the powers of the courts and of parliament. Hume, speaking of the reign of James I (1603-16), says:

"The great complaisance, too, of parliaments, during so long a period, had extremely degraded and obscured those assemblies; and as all instances of opposition to prerogative must have been drawn from a remote age, they were unknown to a great many, and had the less authority even with those who were acquainted with them. These examples, besides, of liberty had commonly, in ancient times, been accompanied with such circumstances of violence, convulsion, civil war and disorder that they presented but a disagreeable idea to the inquisitive part of the people, and afforded small inducement to renew such dismal scenes. By a great many, therefore, monarchy, simple and unmixed, was conceived to be the government of England; and those

popular assemblies were supposed to form only the ornament of the fabric, without being in any degree essential to its being and existence."

And, in a note it is said: "I have not met with any English writer in that age who speaks of England as a limited monarchy, but as an absolute one, where the people have many privileges."

This may be accepted as the view of the king and as an approximately true description of things as they were; but the great charters never ceased to be a part of the English constitution—they were dormant, but unrevoked. Kings had trampled them under foot; but in so doing had only bedded the seeds of liberty in a prepared soil.

The revolution of 1640, resulting in the execution of Charles I, and in the establishment of the commonwealth under Cromwell, the restoration, the renewal of the struggle under Charles II, and James II—the deposition of the latter by a parliament assembled without the king's writ, the choice by the same parliament of William and Mary, their settlement upon the throne under a compact in the nature of a bill of rights, the increasing power of the house of commons, the substitution of annual, for life grants of revenue to the crown, making an annual parliament necessary—all these great episodes in English history and in human progress were enacted before the interested vision of the English colonists in America, and were

highly instructive and suggestive. Out of these struggles, and out of the reformation, had come a literature of liberty. The dignity and the equality of men—the state for man, and not man for the state—the universal fatherhood of God; and its corollary, the universal brotherhood of man, liberty of conscience and of speech—all these great themes had found impassioned expression. What wonder that the colonists began very early to ask if the king may not lay a charge upon Englishmen at home by an order in council, but only by the free votes of a representative assembly, why should he do so upon Englishmen who have, for the glory of God and of England, braved the perils of the sea and of the savage?—and that further and more searching question, by what right does a parliament in which we have no representation assume sovereign legislative power over us?

The earlier charters appear to have been framed without any adequate conception of the commercial and political importance which the colonies were to attain; and for a time the king was lax in his supervision, and not careful to maintain prerogatives that seemed to involve burdens rather than benefits to the crown treasury.

In my next lecture I will ask your attention to some of these earliest American constitutions.

# THE COLONIAL CHARTERS

## SECOND LECTURE

**Delivered at Stanford University, March 12, 1894**

It is my purpose to-day to notice some general aspects of the charters under which the American settlements were made, and to outline the development in the colonies of those unwritten constitutions which came by use to be treated—though not so accepted by the English crown—as expressing the fundamental civil rights of the inhabitants.

The colonists, in their contentions with the crown, demanded *all* the rights given by their charters, but they never accepted the charters as containing full bills of rights. If a specification could not be found in the charter of the colony it was sought in the *Magna Charta;* and, if not found there, in later English precedents; and, when all these gave out, in God's great charter of original and inalienable rights.

The earlier charters were chiefly land grants—rather conveyances than civil constitutions. The

theory of the English law upon which they proceeded was that all newly-discovered lands were the property of the king and might be granted by him to corporations or individuals upon agreed terms and charges. Some of these American grants were to companies or corporations, upon which succession and certain governing powers of a corporate nature were conferred. The corporations were subject to what was known as the visitorial power of the king, and the grants or charters to forfeiture by judicial decree, for cause.

The English parliament, at the beginning, had no participation in these matters. The charters were not submitted to it for its approval; and the only relation between the colonists and the kingdom was through the king. This fact should be kept in mind; for it will appear that when, at a later period, the English parliament asserted a sovereign legislative supremacy over the colonies the claim was denied, and the denial was grounded by some upon the theory that the colonies were royal possessions—having the same king with the English—but not a part of the realm of England.

The introductory words of the Massachusetts charter, of 1620, were: "James, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith &c. * * * of our especiall Grace, mere motion, and certain knowledge, by the advice of the Lords and others of our Privy

Council have for us, our heirs and successors, granted, ordained and established," etc. The conclusion reads: "Witness our selfe at Westminster," etc.

Franklin, writing in 1774, said:

"From a thorough inquiry (on occasion of the stamp act) into the nature of the connection between Britain and the colonies, I am convinced that the bond of their union is not the parliament, but the king. That, in removing to America, a country out of the realm, they did not carry with them the statutes then existing; for, if they did, the Puritans must have been subject there to the same grievous act of conformity, tithes, spiritual courts, etc., which they meant to be free from by going thither; and in vain would they have left their native country, and all the conveniences and comforts of its improved state, to combat the hardships of a new settlement in a distant wilderness, if they had taken with them what they meant to fly from, or if they had left a power behind them capable of sending the same chains after them, to bind them in America. They took with them, however, by compact, their allegiance to the king, and a legislative power for the making a new body of laws with his assent, by which they were to be governed. Hence they became distinct states, under the same prince, united as Ireland is to the crown, but not to the realm, of England, and governed each by its own laws, though with the

same sovereign, and having each the right of granting its own money to that sovereign."

This reasoning was not adopted by all of those who denied the supremacy of the English parliament. For the most part, as we shall see, they did not refine very much, but were satisfied to rest their opposition upon the principle that taxation without representation was in violation of their rights as Englishmen.

The early grants or charters treated the settlements as commercial adventures, and took little account of matters of civil government. In most cases the patentees were men who did not contemplate an American residence. They adventured their money, but not their persons; they sought pecuniary, rather than political advantages; government was an incident. The governing body of the corporation—its board of directors, as we should say—selected the resident governor and other officers and made laws and regulations, much as a railroad corporation does with us. But, as the visions of sudden wealth were dissipated from the minds of the patentees, and the colonists became more numerous, political interests and considerations came to have a fuller recognition, and before long to be of the first importance. And so the later charters came more to resemble civil constitutions—laws to have more consideration than lands, and the settlers more than the home adventurers.

The American colonies have been assigned to three general classes, though several of them passed from one class to the other before the revolution. These classes were, first, the charter colonies. Of these, Massachusetts, Connecticut and Rhode Island only, preserved their charter form. The later charters were quite distinctive from the earlier, and in a larger or smaller degree authorized—or implied—a government by the people. Representative assemblies were, in some cases, authorized, and some of the charters were so consonant with republican institutions that they were capable of being continued as the fundamental law of free states in the union of the states. It is a very interesting fact that Connecticut and Rhode Island continued under their charters, not only during the revolution, but long after the adoption of the national constitution. The charter of Rhode Island, granted in 1663, was not superseded as the constitution of that state until 1842, and the charter of Connecticut, of 1662, was the organic law of that state until 1818.

In the second class, known as the royal or provincial colonies, the governing powers were exercised by the crown; not through interposed corporate boards, or proprietors, but through governors and councils appointed by the king, and acting under royal instructions or commissions. The instructions were made and modified at the king's pleasure; but under these instructions and in spite

of them, representative assemblies were organized, and a large measure of popular control assumed.*

The proprietary colonies constituted the third class. Here the land grants were to private individuals, and were accompanied by a grant to the patentees or proprietors of large powers of government. Before the revolution all of the proprietary colonies had become royal colonies by the surrender of their charters to the king, except Pennsylvania, Delaware and Maryland.

Mr. Blackstone's classification of the American colonies, and his view of the rights of the colonists, as given in his commentaries, are these:

"Besides these adjacent islands, our most distant plantations in America and elsewhere are also, in some respect, subject to the English laws. Plantations or colonies, in distant countries, are either such where the lands are claimed by right of occupancy only, by finding them desert and uncultivated, and peopling them from the mother country; or where, when already cultivated, they have been either gained by conquest or ceded to us by treaties. And both these rights are founded upon the law of nature, or at least upon that of nations. But there is a difference between these two species of colonies with respect to the laws by which they are

*New Hampshire, New York, New Jersey, Virginia (after 1624), North Carolina and South Carolina (after 1729), and Georgia (after 1751) were provincial colonies.

bound. For it hath been held that if an uninhabited country be discovered and planted by English subjects, all the laws then in being, which are the birthright of every subject, are immediately there in force. But this must be understood with very many and very great restrictions. Such colonists carry with them only so much of the English law as is applicable to their own situation and the condition of an infant colony; such, for instance, as the general rules of inheritance and of protection from personal injuries. The artificial refinements and distinctions incident to the property of a great and commercial people, the laws of police and revenue (such especially as are enforced by penalties), the mode of maintenance for the established clergy, the jurisdiction of spiritual courts, and a multitude of other provisions, are neither necessary nor convenient for them, and therefore are not in force. What shall be omitted and what rejected, at what times, and under what restrictions, must, in case of dispute, be decided in the first instance by their own provincial judicature, subject to the revision and control of the king in council; the whole of their constitution being also liable to be new-modelled and reformed by the general superintending power of the legislature in the mother country. But in conquered or ceded countries, that have already laws of their own, the king may indeed alter and change those laws; but, until he does actually

change them, the ancient laws of the country remain, unless such as are against the law of God, as in the case of an infidel country. Our American plantations are principally of this latter sort, being obtained in the last century either by right of conquest and driving out the natives (with what natural justice I shall not at present inquire), or by treaties. And therefore the common law of England, as such, has no allowance or authority there; they being no part of the mother country, but distinct, though dependent dominions. They are subject, however, to the control of the parliament, though (like Ireland, Man, and the rest) not bound by any acts of parliament, unless particularly named.

"With respect to their interior polity, our colonies are properly of three sorts. 1. Provincial establishments, the constitutions of which depend on the respective commissions issued by the crown to the governors, and the instructions which usually accompany those commissions, under the authority of which provincial assemblies are constituted, with the power of making local ordinances not repugnant to the laws of England. 2. Proprietary governments, granted out by the crown to individuals, in the nature of feudatory principalities, with all the inferior regalities, and subordinate powers of legislation, which formerly belonged to the owners of counties-palatine: yet still with these express

conditions, that the ends for which the grant was made be substantially pursued, and that nothing be attempted which may derogate from the sovereignty of the mother country. 3. Charter governments, in the nature of civil corporations with the power of making by-laws for their own interior regulations, not contrary to the laws of England, and with such rights and authorities as are especially given them in their special charters of incorporation. The form of government in most of them is borrowed from that of England. They have a governor named by the king (or, in some proprietary colonies, by the proprietor), who is his representative or deputy. They have courts of justice of their own, from whose decisions an appeal lies to the king and council here in England. Their general assemblies, which are their house of commons, together with their council of state, being their upper house, with the concurrence of the king, or his representative, the governor, make laws suited to their own emergencies. But it is particularly declared by statutes 7 and 8, W. III, c. 22, that all laws, by-laws, usages, and customs, which shall be in practice in any of the plantations, repugnant to any law, made or to be made in this kingdom relative to the said plantations, shall be utterly void and of none effect. And, because several of the colonies had claimed a sole and exclusive right of imposing taxes upon themselves, the statute 6, Geo. III, c. 12, ex-

pressly declares, that all his majesty's colonies and plantations in America have been, are, and of right ought to be, subordinate to and dependent upon the imperial crown and parliament of Great Britain, who have full power and authority to make laws and statutes of sufficient validity to bind the colonies and people of America, subjects to the crown of Great Britain, in all cases whatsoever. And this authority has been since very forcibly exemplified and carried into act by the statute 7, Geo. III, c. 59, for suspending the legislation of New York, and by several subsequent statutes."

This view was not accepted by the colonists—and in another lecture I will point out the very conclusive objections to some of Mr. Blackstone's conclusions.

We will now examine the particular provisions of some of the colonial charters, as general examples—it will not be possible to refer to all of them.

Of the charter of Massachusetts Bay, of 1629, Mr. Story says: "It furnished them (the colonists), however, with the color of delegated sovereignty, of which they did not fail to avail themselves. They assumed under it the exercise of the most plenary executive, legislative and judicial powers."

Under Charles II this charter and these privileges were challenged, and, in 1684, the high court of chancery of England decreed a forfeiture of the charter, and a non-popular government was estab-

lished by the king, which was continued until William and Mary, in 1691, granted a new charter, uniting Massachusetts Bay, Plymouth and Maine. This charter reserved to the crown the appointment of a governor, in whom was vested an absolute veto upon legislation. A council was provided to be chosen by the assembly, and the principal officers of the province were to be appointed by the governor with the consent of the council. A general assembly, consisting of the governor and council, and of representatives chosen from the towns, assembled once a year. This body established the courts, imposed taxes and made the necessary laws for the government of the province. The expressed limitations upon the legislature lay in the veto of the royal governor, and in a veto reserved to the king which might be exercised within three years.

Mr. Lodge, in his short history of the colonies, says:

"In Massachusetts, after the loss of the old charter, a new charter was obtained which established a form of government more closely resembling its predecessor than the common provincial government from which some features were taken. Under the old system the charter of a trading corporation, drawn with intentional vagueness, had, without color of law, been converted into a foundation of an independent state. * * * The governor, the assistants, or the upper house, and the lower house were

all chosen annually by the freemen; but by the new charter the appointment of the governor was given to the crown, the assistants or council were chosen by the assembly, subject to the governor's approval, and the representatives still continued to be elected by the people."

The first patent for the Providence plantations, issued in 1643 by Robert, Earl of Warwick, as governor in chief of all His Majesty's plantations upon the coast of America, and his associate commissioners, recited the settlement by English subjects in the towns of Providence, Portsmouth and Newport, and conferred upon them a charter of incorporation "with full power and authority to rule themselves, and such others as shall hereafter inhabit within any part of the said tract of land, by such a form of civil government, as by the voluntary consent of all, or the greater part of them, they shall find most suitable to their estate and condition; and, for that end, to make and ordain such civil laws and constitutions, and to inflict such punishments upon transgressors, and for execution thereof, and to place, and displace officers of justice, as they, or the greater part of them, shall by free consent agree unto."

There was here, as in other charters, a general limitation that the laws made should be conformable to the laws of England, so far as the conditions would admit.

The charter granted for Rhode Island and Providence plantations by Charles II, in 1663, to Benjamin Arnold "and the rest of the purchasers and free inhabitants of our island, called Rhode Island, and the rest of the colony of Providence plantations," provided for a governor, deputy governor and ten assistants to be from time to time elected and chosen out of the freemen of the company. An assembly composed of the assistants and representatives chosen from the towns was to assemble twice in each year "to consult, advise and determine in and about the affairs and business of the said company and plantations." The governor, assistants and delegates were constituted a general assembly with power to establish offices, choose officers, and "from time to time to make, ordain, constitute or repeal such laws, statutes, orders and ordinances, forms and ceremonies of government and magistery as to them shall seem meet for the good and welfare of the said company and for the government and ordering of the lands and hereditaments, hereinafter mentioned to be granted, and of the people who do, or at any time hereafter shall, inhabit or be within the same." Power to establish courts of law was granted, to prescribe the qualifications of electors, to prescribe crimes and their punishments, to organize a militia and to commission the officers thereof.

This charter was framed upon the most liberal

principles, and with an unselfish regard to the liberties and prosperity of the inhabitants, and in contrast with some others—and especially with the nagging, unfriendly and repressive policy generally pursued by the English kings toward the colonies—illustrates the fitfulness and caprice that always attends government by a man.

The charter of Connecticut was granted to John Winthrop and others (1662), as the representatives of settlers already located and who had organized a provisional government, under a commission from the general court of Massachusetts, as early as 1636. The grant was to the persons named and "such others as now are, or hereafter shall be admitted and made free of the company and society of our colony of Connecticut." A governor, deputy governor and twelve assistants were named in the charter to hold office until a day named, when an election by the people of their successors was provided for. Provision was made for a general assembly, representative of the freemen of the colony, having full legislative powers, subject to the laws of England—power was given to constitute courts, to organize a militia, and generally to exercise full powers of local government. It was expressly declared that all English subjects who should go to or inhabit within the colony, and their children, should enjoy all the liberties and immunities of free and natural subjects of the English crown.

Here also, as you will observe, popular government was, as in the case of Rhode Island, fully provided for. The governor and all other officers were chosen by the people—the king is in the background—the parliament is seen only in the shadow of those vague words that made the colonial legislation subject to the laws of England; the provision being "to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, ordinances, directions, and instructions, not contrary to the laws of this realm of England."

The charter of 1606, granted by James I to the Plymouth Company, and to the London companies, under which Virginia was colonized, was without any concessions or guaranties of civil rights or powers to the colonists, save the general reservation to the settlers of all "liberties, franchises, immunities, within any of our other dominions to all intents and purposes as if they had been abiding and born within this our realm of England." A local council, to consist of thirteen members, was provided for each colony, to be appointed by the king, which should "govern and order all matters and causes which shall arise, grow, or happen, to or within the same several colonies according to such laws, ordinances and instructions, as shall be, in that behalf, given and signed with our hand or sign manual, and pass under the privy seal of our realm of England." A home council (in England), also to be ap-

pointed by the king, and to consist of thirteen persons, was provided for, to "have the superior managing and direction, only of and for all matters that shall or may concern the government, as well of the said several colonies, as of and for any other part or place, within the aforesaid precincts." It will be seen that, in the last resort, everything relating to government was, under this charter, reserved to the crown.

Speaking of this charter, Mr. Lodge says: "A more awkward scheme could hardly have been devised. An arbitrary and irresponsible council in America, another almost equally so in England, the legislative powers reserved to the king, the governing body a commercial monopoly, and the chief principle of society community of property, together formed one of the most ingeniously bad systems for the government of men which could be devised."

The extension of this charter, in 1609, gave somewhat larger powers of government to the company. It established "one council here [in England] resident," according to the tenor of the former charter, the members of which were named.

To this council "here resident," power was given to appoint the governor and other officers and ministers and to make laws necessary for the government of the said colony. The council was to be thenceforth chosen out of the company of the said

adventurers by the votes of the greater part in their assembly for that purpose.

The charter of 1611-12 provided that the treasurer and company of adventurers might once a week or oftener, at their pleasure, hold a court and assembly for the ordering and government of the plantation, which was to be composed of five persons of the council and fifteen others of "the generality" of said company, assembled in such manner as had been customary. This body was authorized to order and dispatch "all such casual and particular occurrences, and accidental matters, of less consequence and weight, as shall from time to time happen, touching and concerning the said plantation." All matters of greater weight and importance affecting the public weal and general good and especially the manner of government to be used was committed to a general assembly of the company which met four times in the year and was empowered to choose persons to be of the king's council for the colony and to nominate and appoint such officers as were requisite for the government of the affairs of the company and to make such laws and ordinances for the good of the plantation as were thought requisite, not contrary to the laws of England. (These assemblies met in England.) In 1624 the charter of Virginia was annulled by quo warranto in the king's bench, and Virginia became a royal colony.

New Hampshire never had a charter; but under the royal commission for the government of the colony, issued in 1680, the civil organization consisted of a president and council appointed by the king, and of a house of burgesses, or general assembly, to be composed of inhabitants of the colony elected by the people; but all questions as to the qualification of electors and of the persons chosen were reserved for the decision of the president and council. The judicial powers were vested in the president and council, and all laws required their sanction.

The charter of Carolina (which included the territory now known as North and South Carolina until the division in 1732), granted in 1663 to the Earl of Clarendon and others, vested in the proprietors full power to make laws "with the advice, assent and approbation of the freemen of the said province, or of the greater part of them, or of their delegates or deputies, whom for enacting of the said laws," should be assembled by the proprietors. All customs and subsidies in the province were to be assessed by and with the consent of the majority of the free people there. Carolina became a provincial colony in 1729 by the surrender of the charter to the crown.

In the grant to Lord Baltimore of the territory that became the colony of Maryland, made in 1632, it was provided that the proprietor and his succes-

sors might make laws for the government of the colony with the assent and advice of the majority of the freemen or their representatives, and the government put into force consisted of a governor, council and assembly. In the latter, at the beginning, every freemen was entitled to appear. Subsequently a representative system was adopted and the legislative body divided into two chambers; the lower body was chosen by a vote of the freemen, and the upper was composed of a council of persons specially designated and summoned by the proprietor.

In Pennsylvania, a proprietary colony, under the wise and liberal administration of William Penn, representative government prevailed from the beginning. In a prelude to his frame of government he declares that "any government is free to the people under it (whatever be the frame) where the laws rule and the people are a party to those laws." The charter (1681) provided that all legislation should be with the consent of the freemen of the province or of their delegates who should be called in general assembly. A veto was reserved to the king within five years of the passage of the laws. The appointment of all officers was vested in the proprietor. But the frame of government agreed upon between Penn and the freemen of the province, in 1683, provided for the election of a council consisting of seventy-two members, one-third to re-

tire each year; and in the choice of this body the right to vote was extended to all freemen of the colony.

In 1701 a "Charter of Privileges for Pennsylvania" was granted by Penn, with the approval of the general assembly. It provided for a yearly meeting of an assembly to be chosen by the freemen of the province, for the election by the assembly of its own officers, and gave to the assembly the power to judge of the qualifications of its members, and to sit upon its own adjournments. The council did not participate in legislation, but was an advisory board to the governor—so that the legislative body was single and not bicameral, as the general practice was. The local officers were to be appointed by the governor upon the nomination of the freemen of the district in which the officer was to serve.

This hasty sketch of the frames of government provided for these colonies will serve to show the measure of popular government stipulated for by the king; but, as I have said, the measure exercised by the people was much larger.

Judge Story says that the colonists of Massachusetts "extended their acts far beyond its [the charter's] expression of powers, and while they boldly claimed protection from it against the royal demands and prerogatives, they nevertheless did not feel that it furnished any limit upon the freest ex-

ercise of legislative, executive or judicial functions." And this was, in a degree, true of the other colonies. The provision in the charter of William and Mary to Massachusetts, for a representation of the freemen in a general assembly, was rather a recognition of a former practice than a new grant. For, as early as 1634, the colonists of Massachusetts had demanded and secured the admission of delegates chosen by the towns to the general court, and Plymouth had a representative assembly as early as 1639.

The royal colonies felt the common need of representative assemblies that should participate in lawmaking, and were not slack in securing them. In Virginia, in the year 1619, the governor was authorized, in order to allay popular discontent, to summon representatives and when, on July thirtieth of that year, the burgesses chosen by the people assembled with the governor and his council, the representative principle had its first exemplification in America.

Speaking of this event and of the general subject, though not, as you will see, with perfect accuracy, Governor Hutchinson of Massachusetts said: "It is observable that all the colonies before the reign of King Charles II, Maryland excepted, settled a model of government for themselves. Virginia had been many years distracted under the government of presidents and governors, with coun-

cils, in whose nomination or removal the people had no voice, until in the year 1620 a house of burgesses broke out in the colony; the king, nor the grand council at home not having given any powers or directions for it. The governor and assistants of the Massachusetts at first intended to rule the people; and, as we have observed, obtained their consent for it, but this lasted two or three years only; and, although there is no color for it in the charter, yet a house of deputies appeared suddenly, in 1634, to the surprise of the magistrates, and the disappointment of their schemes for power. Connecticut soon after followed the plan of the Massachusetts. New Haven, although the people had the highest reverence for their leaders, and for near thirty years in judicial proceedings submitted to the magistracy (it must be remembered, however, that it was annually elected) without a jury; yet in matters of legislation the people, from the beginning, would have their share by their representatives. New Hampshire combined together under the same form as Massachusetts."

It is not my purpose to follow any further the origin and development of representative legislative assemblies in the colonies—the examples given will suffice. The important fact to be noted is that such assemblies had, before the year 1700, become a part of the constitution of every colony except Georgia, and of that colony in 1754. In all of the

colonies, except Pennsylvania and Delaware (the latter was under the Penn proprietorship, but had a separate assembly) the legislative bodies had very naturally assumed the form of an upper and lower house sitting apart. In Massachusetts, Connecticut, and Rhode Island, both the council and the assembly were chosen by the people—the council at large, or by the assembly, and the members of the assembly in specified towns or districts. In other colonies the council was appointed by the crown, while the delegates or assemblymen were chosen by the people. It does not appear that the question of the relative merits of a legislature consisting of a single body, and of one consisting of two bodies sitting apart was debated. That was the English system, and the popular or delegate body was generally an addition of men chosen by the people to other men chosen by the crown or the governor; and then, and most naturally, of a popular body sitting apart to a smaller and more permanent body chosen by a different method. The separate concurrence of each, and of the king or his representative, established the law. In Pennsylvania there was no struggle for a representative assembly—it was a part of the frame of government. Under the frame of government of 1682 the legislative power was exercised by a council and general assembly sitting apart; the first proposing and framing the laws, and the latter approving or rejecting them. The

members of both bodies, however, were chosen by the people, and the laws ran: "By the governor with the assent and approbation of the freemen in provincial council and general assembly." The new frame of government, proposed and accepted in 1701, provided for a single legislative body, or general assembly, and the laws then ran: "By the governor with the consent and approbation of the freemen in general assembly met." Penn had been a student of the new theories of government. Writing to a friend, shortly after obtaining his grant, he said: "And because I have been somewhat exercised at times about the nature and end of government among men, it is reasonable to expect that I should endeavor to establish a just and righteous one in the province that others may take example by it."

His frames of government are instruments most worthy of your attention and study. What more discriminating, more comprehensive, or more noble than the end and purpose of civil government as described by him: "To support power in reverence with the people, and to secure the people from the abuse of power; that they may be free by their just obedience, and the magistrates honorable, for their just administration; for liberty without obedience is confusion, and obedience without liberty is slavery."

Let us see now how far some of the other inci-

dents of free government were in exercise in the colonies. The right of petition, which afterward came into such prominence in the relation of the colonies to the crown, was generally admitted, in the relation of the local legislative assemblies and other authorities, to the people. An early law of Massachusetts guaranteed to every one, whether settler or foreigner, slave or free, the right, in an orderly and respectful manner, to present to any public court or assembly any complaint or petition. So the right of free discussion or free speech was an incident of these popular public assemblages. They were gathered for discussion, for the exchange of views; and these implied, as I have before said, a certain equality among those who assembled—a perfect freedom to every member of the assembly to express by voice, as well as by vote, his view of the matters to be resolved. It was not until after these rights of free assembly and of free discussion had been long in practical use in the colonies that the origin and natural and legal basis of them came to be much discussed. They were used as necessary appliances of the state in which the colonists found themselves.

A system of small civil subdivisions—for the control and ordering of neighborhood affairs—had been established in all the colonies. The titles by which the smaller civil subdivisions were known were va-

rious; but they were quite alike and quite close in their resemblance to the early English subdivisions.

In Virginia these subdivisions were, at the beginning, designated as cities, hundreds and plantations. Some of these hundreds still survive as local designations. Subsequently the divisions came to be known, in some colonies, as parishes and counties. The designation of the smaller subdivisions as parishes was common in the southern colonies, while the word town or township prevailed in the northern colonies. The laying out of highways, the building of bridges, of prisons, of workhouses, the relief of the poor, and the making of other local regulations were committed to these neighborhood boards. In some of the colonies, as in Pennsylvania, county commissioners were given the power to fix rates and to levy taxes for county purposes, and the townships to make rates for the support of the poor—an arrangement still existing in many of the states. The general court of Massachusetts, in 1636, passed a law reciting that "whereas particular towns have many things which concern only themselves, and the ordering of their own affairs, and disposing of business in their own towns," and granting to the towns power to make orders or laws affecting the town, not repugnant to the general laws, to choose constables, surveyors, etc. The practice of choosing selectmen in the towns already

prevailed. A law quite similar had been adopted in the Plymouth colony a few years before; and the same general order prevailed in Connecticut and throughout the New England colonies.

Mr. Frothingham says, speaking generally of all the colonies and of the local subdivisions therein: "In each the voters chose their own officers; each had its courts of justice; each, in relation to its peculiar local interests, had a jurisdiction as wide as its territorial limits. In this way, each locality provided for the concerns of social comfort and of police, of education and of religion. This work was never done for the people, but always by them; they tested their own decisions, and could correct their own judgments."

It appears then that at and before the breaking out of the revolutionary war the constitutions or civil organizations of all the colonies had in common, though in different degrees—by charter or use—these elements:

First. They were subdivided into towns, townships or parishes, and these smaller and primary subdivisions were combined into hundreds or counties, according to convenience. The officers of these were mostly chosen by the people, and were charged with the administration of the business of the town, parish or county.

Second. A colonial legislature—generally composed of two bodies, one at least of which was

chosen by the inhabitants—which had power to make laws, not inconsistent with the laws of England, and subject to the approval of the king, acting directly or through his representative. In some of the colonies this right was rested on the charters; in others its foundation was disputed, the people claiming it as a natural right, the crown holding that it was of and at the king's pleasure. The limitation that the colonial laws were not to be inconsistent with the laws of England was not, however, construed by the colonists to subject colonial legislation to all such laws as might thereafter be made by parliament, but only to the "primitive, ancient and fundamental laws of England," as the phrase ran in the West Jersey concessions. In New England the assemblies were chosen annually; in the other colonies the term of office varied, being three years in Maryland and seven in New York.

Third. The right of petition, of public assemblage, of free speech, of trial by jury, of *habeas corpus,* were claimed; and the practice of them was generally allowed. Judge Story says: "It was under the consciousness of the full possession of the rights, liberties and immunities of British subjects, that the colonists in almost all the early legislation of their respective assemblies insisted upon a declaratory act, acknowledging and confirming them. And for the most part they thus succeeded in obtaining a real and effective *Magna Charta* of

their liberties. * * * The trial by jury in all cases, civil and criminal, was as firmly and as universally established in the colonies as in the mother country."

If these things were a part of the British constitution they were also a part of the civil order in each British colony. They were not all at all times in full exercise in England any more than in the colonies; but they were none the less the rights of Englishmen; and the colonists were English subjects.

Fourth. The supreme executive powers were vested in the king, and were exercised by a governor (though in New Hampshire he was styled president), or by a governor and council. The governor was chosen by the people in Connecticut and Rhode Island; appointed by the proprietors in Pennsylvania, Delaware and Maryland, and by the crown in the other colonies. The powers of the governor were not, either in law or usage, uniform. In most of the colonies he had power to summon and prorogue the legislature—though in Pennsylvania his right to prorogue was successfully resisted by the assembly. He commanded the militia; had a veto upon legislation; the pardoning power, general or limited; and the appointment of judicial and other important civil officers. He stood for the king; he was the alien element in the government; and his lot was for the most part and increasingly an unhappy one. If he strove to please the people

he lost the favor of the king; if he was subservient to the king, he was pounded with remonstrances and petitions, and opposed by the assembly, to which he must look for supplies.

Fifth. A judiciary whose judges were appointed generally by the governor (but in Connecticut and Rhode Island by the legislature); whose salaries were, with a few exceptions, fixed by the legislatures and paid out of the colonial treasuries.

Speaking of the colonial judiciaries, Franklin said they were formerly, in most colonies, "appointed by the crown and paid by the assemblies; that, the appointment being during the pleasure of the crown, the salary had been during the pleasure of the assembly: That when it had been urged against the assemblies, that their making judges dependent on them for their salaries was aiming at an undue influence over the courts of justice; the assemblies usually replied that making them dependent on the crown for continuance in their places, was also retaining an undue influence over those courts, and that one undue influence was a proper balance for the other; but that whenever the crown would consent to acts making the judges during good behavior, the assemblies would at the same time grant their salaries to be permanent during their continuance in office. This the crown has, however, constantly refused."

The judgments of these courts were final, except

when appealed to the privy council of the king. They were domestic courts. The judges were taken from the inhabitants. Provision for an appeal in certain cases to the privy council, "to the king," or to "the king in council," was expressly made in some of the charters.

Mr. Story says: "In a practical sense, however, the appellate jurisdiction of the king in council was in full and undisturbed exercise throughout the colonies at the time of the American revolution; and was deemed rather a protection than a grievance." It was held, however, by the governor in council, holding the supreme court of New York, in 1764, that the appeal did not involve a re-examination of the facts settled by the verdict of a jury; that the proceeding was rather in the nature of a writ of error.

Of the relation of the colonies to each other prior to the revolution, Mr. Story says: "Each was independent of all the others; each, in a limited sense, was sovereign within its own territory. There was neither alliance nor confederacy between them. * * * They were known only as dependencies; and they followed the fate of the parent country both in peace and war, without having assigned to them, in the intercourse or diplomacy of nations, any distinct or independent existence. They did not possess the power of forming any league or treaty among themselves which

should acquire an obligatory force without the assent of the parent state." He adds, however, that notwithstanding this they were "fellow-subjects, and for many purposes one people."

Every colonist had a right to inhabit in any other colony; and, as a British subject, was capable of inheriting land.

A writer says that Chalmer's researches "confirm and illustrate the fact that the colonists lived in the enjoyment of a more real autonomy and a do as you please enfranchisement than was shared by home subjects."

And Sir Richard Sutton said, in the debate on the Boston port bill: "If you ask an American who is his master, he will tell you he has none—nor any governor but Jesus Christ."

In my next lecture I will ask your attention to some of the legal aspects of the contentions between the colonies and the mother country.

# LEGAL ASPECTS OF THE CONTROVERSY BETWEEN THE AMERICAN COLONIES AND GREAT BRITAIN

THIRD LECTURE

Delivered at Stanford University, March 19, 1894

It does not consist with my purpose to pursue the history of the controversies between the colonies and the mother country; but a glance at the legal aspects of the great contentions is necessary.

The contest was, in a large sense, single and common; though it naturally had diverse manifestations, at different times and in the different colonies. It was one assault breaking upon different salients of the fortress of liberty. As a debate it was conducted, on the part of the colonies, with wonderful moderation, with the highest courage, and the most conspicuous ability. The petitions, addresses, and public papers of that time, proceeding from American sources, are not excelled in style or strength by any state papers of that great historical period. In the earlier and middle stages

of the controversy the remonstrances and petitions were full of expressions of the most devoted loyalty to the English king. No doubt these expressions were sincere, as such things go. The conception of a free republican state came late and doubtingly into the minds of the most radical of the colonial leaders, and could not be sent out without a cloak until war was flagrant. Habit, family associations, a proud and reverent love for the old kingdom and the old home, and the need of a powerful protector against foreign enemies, kept the colonists loyal, in a sense—much as those who deposed James and set William and Mary upon the throne, under the act of settlement, were loyal Englishmen. The colonists did not desire separation; they were more than willing to remain English subjects; but they would suffer no curtailment of the traditional rights of Englishmen. More liberty, rather than less, was the suggestion of their experience and of the conditions that surrounded them. There has been much debate as to the sincerity of the colonists in their frequent protestations of loyalty, in view of their frequent acts of resistance to the royal edicts. But the solution is easy; they were loyal to an English king who ruled within constitutional limitations and within their special charters, and made his government subserve the right ends of government; but they would judge these matters themselves. The motto "The king can do no wrong" implies the

amenability in English law of his councilors and ministers for wrongs done.

This view was thus expressed in a resolution of the congress of 1775 (December 6th): "But is this traitorously or against the king? We view him as the constitution represents him. That tells us he can do no wrong. The cruel and illegal attacks, which we oppose, have no foundation in the royal authority. We will not, on our part, lose the distinction between the king and his ministers: happy would it have been for some former princes had it always been preserved on the part of the crown."

Speaking with fine satire of the charge that Americans had from the beginning contemplated independence, Justice Drayton, of South Carolina, in a charge to the grand jury in 1776, said: "There was a time when the American army before Boston had not a thousand-weight of gunpowder—the forces were unable to advance into Canada, until they received a small supply of powder from this country, and for which the general congress expressly sent—and when we took up arms a few months before, we begun with a stock of five hundred-weight! These grand magazines of ammunition demonstrate, to be sure, that America, or even Massachusetts Bay, was preparing to enter the military road to independence!"

And George Mason, writing in 1778, says of the question of the first intention of the colonists:

"Equally false is the assertion that independence was originally designed here. Things have gone such lengths, that it is a matter of moonshine to us whether independence was first intended or not, and therefore we may now be believed. The truth is, we have been forced into it."

The inherited English reverence for the king had a strong hold upon the minds of the colonists. The most ardent and radical of the colonial leaders held his tongue and pen under a severe restraint when he spoke of the king. Such was the reverence of the masses of the people for the crown that, almost up to the time of the spilling of blood, denunciation of the king, or a proposal to throw off their allegiance to him, would have been received with general disfavor. When the congress of 1774 assembled, the general thought and hopes of the people ran in the direction of a peaceable adjustment upon the basis of the continued sovereignty of the English king. They did not complain of the king, but to him—much as a boy might complain to an absent father of the cruelties of his tutor. There were historical precedents for this strange mingling of deference and resistance.

The men of Flushing swore fidelity to the king and to William of Orange as his stadt-holder when they were in arms against Alva, the king's governor; and Henry of Navarre wrote to Henry III,

"Thank God, I have beaten your enemies and your army."

So the convention of deputies of New Hampshire, in January, 1775, urged the training of the militia for the defense of the country if it should "ever be invaded by his majesty's enemies," who were his majesty's soldiers.

The colonists were quite sincere when they said they did not aim at independence; but there was never a time when, presented as the alternative of arbitrary rule, they would not have embraced it. Barré, in his famous speech upon the stamp act, in the English house of commons, said of the colonists: "The people there are as truly loyal, I believe, as any subjects the king has; but a people jealous of their liberties, and who will vindicate them if they should be violated."

In an address to the people of Great Britain, October, 1774, congress said: "Permit us to be as free as yourselves, and we shall ever esteem a union with you to be our greatest glory and our greatest happiness; we shall ever be willing to contribute all in our power to the welfare of the empire; we shall consider your enemies as our enemies, and your interests as our own. But, if you are determined that your ministers shall wantonly sport with the rights of mankind—if neither the voice of justice, the dictates of the law, the principles of the constitution, or the suggestions of humanity, can re-

strain your hands from shedding human blood in such an impious cause, we must then tell you that we will never submit to be hewers of wood or drawers of water for any ministry or nation in the world."

And the congress of 1775 made this response: "We are accused of 'forgetting the allegiance which we owe to the power that has protected and sustained us.' Why all this ambiguity and obscurity in what ought to be so plain and obvious as that he who runs may read it? What allegiance is it that we forget? Allegiance to parliament? We never owed—we never owned it. Allegiance to our king? Our words have ever avowed it, our conduct has ever been consistent with it."

The English government by a cabinet was not then in as perfect operation as now; but our ancestors were not pursuing an altogether fanciful line when they appealed to the king against the ministry. If one of the present English colonies should suffer oppression, it would justly and strictly be chargeable to Lord Roseberry and not to the queen.

It may be well here to say a further word as to the source of the British dominion in the American colonies. If that dominion had its origin in discovery and occupancy, the powers of the crown and the rights of the colonists were very different from

what they would have been if the dominion had been acquired by conquest.

Mr. Blackstone's view was that the lands in America had been acquired by conquest; and the rules as to such colonies he states thus: "But in conquered or ceded countries, that have already laws of their own, the king may, indeed, alter and change those laws; but, till he does actually change them, the ancient laws of the country remain, unless such as are against the law of God, as in the case of an infidel country." While as to newly discovered lands he says: "For it hath been held, that if an uninhabited country be discovered and planted by English subjects, all the laws then in being, which are the birthright of every subject, are immediately there in force."

Judge Story, in his commentaries, satisfactorily refutes this view and shows that the claim of England and, indeed, of all the European governments, to American territory, was based upon discovery. This was true, he thinks, even of the Dutch settlements of New York, for England did not rest her title to that province upon conquest, but rather the conquest upon an antecedent right founded upon discovery.

The Indians, Judge Story shows, were not a conquered people; and, if they were such, had no laws or organized government which could be assumed and enforced until the pleasure of the king was

known. He says: "Even in case of a conquered country where there are no laws at all existing, or none which are adapted to a civilized community, or where the laws are silent, or are rejected and none substituted, the territory must be governed according to the rules of natural equity and right. And Englishmen removing thither must be deemed to carry with them those rights and privileges which belong to them in their native country."

He further shows that, even if the doctrine of Blackstone were right upon general principles, it did not apply to the American colonies.

That we may understand what particular rights were claimed by the colonists as Englishmen, or under their charters, and the view taken of these claims in England, I quote here from some of the most careful and notable expressions of the time. The right that came most to the front in the debate was, as I have said, the right to be exempt from taxes not voted by themselves; but it was soon found that this involved the larger question as to the power of parliament to legislate in other, or indeed in any matters, affecting the colonies.

The prevailing English view was that the legislative power of parliament extended to all colonial matters and was supreme. This view was expressed in a declarative act in these unambiguous and sweeping sentences: "All his majesty's colonies and plantations in America have been, are, and

of right ought to be, subordinate to and dependent upon the imperial crown and parliament of Great Britain, who have full power and authority to make laws and statutes of sufficient validity to bind the colonies and people of America, subjects to the crown of Great Britain, in all cases whatsoever."

But there were not a few liberal and learned English statesmen who took a different view and boldly opposed the oppressive measures of the ministry. The power of the parliament to tax the colonies was denied by some of these.

About 1680 the Marquis of Halifax, a member of the privy council, in opposing arbitrary measures against the colonies, declared that "he could not agree to live under a king who should have it in his power to take when he pleased the money which he (Halifax) had in his pocket."

Mr. Burke, in his speech on the taxation of America in 1774, says, speaking of the contest for liberty in England: "They took infinite pains to inculcate, as a fundamental principle, that in all monarchies the people must in effect themselves mediately or immediately possess the power of granting their own money, or no shadow of liberty could subsist. The colonies draw from you, as with their life-blood, these ideas and principles. Their love of liberty, as with you, is fixed and attached on this specific point of taxing. Liberty might be safe or might be endangered in twenty other particulars,

without their being much pleased or alarmed. Here they felt its pulse; and, as they found that beat, they thought themselves sick or sound. I do not say whether they were right or wrong in applying your general argument to their own case. It is not easy, indeed, to make a monopoly of theorems and corollaries. The fact is, that they did thus apply those general arguments; and your mode of governing them, whether through lenity or indolence, through wisdom or mistake, confirmed them in the imagination that they, as well as you, had an interest in these common principles."

Among other circumstances which had brought the colonists to the views of liberty held by them, Mr. Burke speaks of the effect of education, and says that in no country, perhaps, in the world was the law so generally studied.

The Earl of Chatham, speaking on the bill declaring the sovereignty of Great Britain over the colonies, said: "My position is this—I repeat it—I will maintain it to my last hour—taxation and representation are inseparable; this position is founded on the laws of nature; it is itself an eternal law of nature; for whatever is a man's own is absolutely his own; no man has a right to take it from him without his consent, either expressed by himself or representative; whoever attempts to do it attempts an injury; whoever does it commits a robbery; he throws down and destroys the distinction

between liberty and slavery. Taxation and representation are coeval with and essential to this constitution." In the same speech he recites the fact that the palatinate of Chester had resisted a tax upon the ground of non-representation; and, upon their petition, the king had allowed their plea. "In short, my lord," said he, "from the whole of our history, from the earliest period, you will find that taxation and representation were always united."

Pitt, in his speech in the house of lords, in December, 1775, said: "Let the sacredness of their property remain inviolate; let it be taxable only by their own consent, given in their provincial assemblies, else it will cease to be property." And again, in the same speech, he said: "Let this distinction then remain forever ascertained. Taxation is theirs, commercial regulation is ours. As an American, I would recognize to England her supreme right of regulating commerce and navigation. As an Englishman by birth and principle, I recognize to the Americans their supreme, unalienable right to their property; a right which they are justified in the defense of, to the extremity."

A few quotations now setting forth the American view—chiefly from the resolves of congress and the colonial assemblies—will enable us to have a clear comprehension of the great issue that was about to be set down for trial.

As early as 1680 we have a voice from New Jer-

sey declaring that "it was a fundamental in their constitution and government that the king of England could not justly take his subject's goods without their consent."

Among the declarations of the continental congress of 1765 was this: "That all supplies to the crown, being free gifts of the people, it is unreasonable and inconsistent with the principles and spirit of the British constitution, for the people of Great Britain to grant to his majesty the property of the colonists."

In the address of this congress to the house of commons it is said "that the parliament, adhering strictly to the principle of the constitution, have never hitherto taxed any but those who were therein actually represented; for this reason we humbly apprehend, they never have taxed Ireland, nor any other of the subjects without the realm." In this congress there was much discussion as to the basis or origin of the rights claimed by the colonies, and in the course of the discussion Christopher Gadsden said: "A confirmation of our essential and common rights as Englishmen may be pleaded from charters safely enough; but any further dependence on them may be fatal. We should stand upon the broad common ground of those natural rights that we all feel and know as men and as descendants of Englishmen. I wish the charters may not ensnare us at last by drawing different colonies to

act differently in this great cause. Whenever that is the case, all will be over with the whole. There ought to be no New England man, no New Yorker, known on the continent; but all of us Americans." How wisely, how nobly spoken! And this voice was from South Carolina—"All of us Americans." The way was long from provincial narrowness and jealousy to a broad nationalism; from a local citizenship, of which the world took no notice, to a national citizenship that boldly challenged the world's deference. But in 1865—just one hundred years after the speaking of these immortal words—the hope of the eloquent South Carolinian bursts into the dawn; and to-day, as never before, we are "all of us Americans."

Among the resolutions adopted by the congress of 1774 (October 14), was the following: "Resolved, 4, that the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council; and, as the English colonists are not represented, and from their local and other circumstances, can not properly be represented in the British parliament, they are entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject only to the negative of their sovereign, in such manner as has heretofore been used and accus-

tomed. But, from the necessity of the case, and a regard to the mutual interest of both countries, we cheerfully consent to the operation of such acts of the British parliament as are *bona fide,* restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members, excluding every idea of taxation internal or external for raising a revenue on the subjects in America without their consent."

It seems that the committee was hopelessly divided on the question of the powers of parliament and that the terms used in the fourth resolution, as adopted, were accepted as a compromise, not of opinions but of phrases; a practice quite familiar in modern political conventions. Mr. John Adams suggested the declaration that, from "the necessity of the case" the colonists "consented" to the operation of laws regulating external commerce, excluding "every idea of taxation internal or external for raising a revenue on the subjects in America without their consent." The one side could argue that this was a consent to the rightfulness of such laws, and the other that the laws derived their rightfulness from the consent; while the denial of every idea of taxation left the one side free to say, in a particular case, that taxation was not the idea, but only an incident of the law; and the other to argue

that where taxation resulted it must have been intended.

This resolution has an especial significance in two particulars—first, it declares that the colonies could not be properly represented in the British parliament; and second, it expresses a consent to the general regulations of commerce by the parliament, provided every idea of revenue was excluded. The last was a compromise view—a concession in the interests of peace; but the binding force of parliamentary navigation acts was distinctly put upon the consent of the colonies.

In a declaration by the congress of 1775 justifying resistance—after enumerating some of the colonial grievances—it is said: "But why should we enumerate our injuries in detail? By one statute it is declared that parliament can 'of right make laws to bind us in all cases whatsoever.' What is to defend us against so enormous, so unlimited a power? Not a single man, of those who assume it, is chosen by us; or is subject to our control or influence; but on the contrary, *they are all of them exempt from the operation of such laws,* and an American revenue, if not diverted from the ostensible purposes for which it is raised, would actually lighten their own burdens in proportion as they increase ours."

The colonists would not be bound by acts of parliament because they were not represented there; but

would they have accepted representation in parliament as a basis of settlement? I think not. The letter of appointment and instruction from the assembly of Massachusetts to the delegates of the colony to the congress of 1765, which assembled in New York, contained these paragraphs: "If it should be said that we are in any manner represented in parliament you must by no means concede to it; it is an opinion which this house can not see the least reason to adopt. Further, the house think that such a representation of the colonies as British subjects are to enjoy, would be attended with the greatest difficulty, if it is not absolutely impracticable, and therefore, you are not to urge or consent to any proposal for any representation, if such be made in the congress."

In speaking of the English opposition to the suggestion that the difficulties between the mother country and the colonies might be obviated by admitting representatives of the colonies in parliament, Doctor Franklin said: "But the pride of this people can not bear the thought of it, and therefore it will be delayed. Every man in England seems to consider himself as a piece of a sovereign over America, seems to jostle himself into the throne with the king and talk of 'our subjects in the colonies.'"

They would not be taxed by parliament, because they were not represented in parliament, and they did not seek representation in parliament because it

could not in the nature of things be adequate. It would have been delusive—no better practically than the then prevailing system of maintaining colonial agents in London. The colonial members in the house of commons could not defeat, and their presence there could only give sanction to hostile legislation. Taxes might have been voted without the consent of a single representative of the communities from which the levies were to be raised, and by the votes of those whose burdens would have been lightened by the legislation. The grants would still have been by the people of Great Britain of the property of the colonists. The argument of the colonists stated in full was: We can not lawfully be taxed by a body in which we have no representation. We are not represented in the English parliament; therefore we can not be taxed by parliament. We can not in the nature of things have any real representation in the parliament—therefore we will be taxed only by our colonial assemblies.

Our forefathers were wise, but very practical men; not mere casuists or philosophers. They saw that an admission of the power of the parliament to tax them involved the destruction of their liberties and the confiscation of their property—and with an alertness and courage that was admirable they resisted. They would not admit the tip of the camel's nose inside the tent. They maintained with much learning, and with convincing force, that the parliament

could not do this or that—and this or that included pretty much every act that affected them injuriously; but they made no schedule of the things parliament might do. They at once boldly joined issue with the parliamentary declaration that it was authorized "to bind the colonies and people of America in all cases whatsoever." Possibly there were cases in which parliament might legislate for them in an indirect way; but they would not attempt general definitions; they would deal only with particulars—with the concrete and not with the abstract—they would see the proposed statute and admit or exclude it. Just what the powers of parliament over the colonies were was a hard question, and is still a hard question for the student of constitutional history. There seems to have been no safe middle ground found between the admission of full powers on the one hand, and a total denial of any on the other. Satisfactory English precedents were wanting. That taxes were grants to be freely voted by those who were to pay them, through their representatives, was an established principle. But how far general laws, such as laws regulating navigation and other general interests of the whole kingdom, might be made for the colonies by the parliament in which they were not represented was not clear. It turned upon the question, how far the principle that all laws derive their sanction from the consent of the governed, was a

part of the English constitution, and upon the further question, whether the right of Englishmen to have a voice in the making of the laws that were to govern them was possessed by the colonists.

Mr. Story says: "In respect to the political relations of the colonies with the parent country, it is not easy to state the exact limits of the dependency which was admitted, and the extent of sovereignty which might be lawfully exercised over them, either by the crown or by parliament."

Of the authority of parliament, he says: "In regard to the authority of parliament to enact laws which should be binding upon them, there was quite as much obscurity and still more jealousy spreading over the whole subject. * * * No acts of parliament, however, were understood to bind the colonies unless expressly named therein.

"But it was by no means an uncommon opinion in some of the colonies, especially in the proprietary and charter governments, that no act of parliament whatsoever could bind them without their own consent."

Mr. Story says that after the passage of the stamp act the subject was re-examined in the colonies, especially in connection with the declaration by parliament of an absolute power of legislation; and that many of the leading minds "passed by an easy transition to a denial, first, of the power of tax-

ation, and next, of all authority whatever to bind them by its laws."

He quotes James Wilson, of Pennsylvania, as saying that he entered upon the inquiry "with a view and expectation of being able to trace some constitutional line between those cases in which we ought and those in which we ought not to acknowledge the power of parliament over us"; but that in the prosecution of his inquiries he became convinced that such a line did not exist and that there could be "no medium between acknowledging and denying that power in all cases."

When Governor Hutchinson, in 1773, said in an address to the general court of Massachusetts that he "knew of no line that should be drawn between the supreme authority of parliament and the total independence of the colony," it was answered by the general court that parliament was not supreme and that "the drawing the line between the supreme authority of parliament and total independence was a profound question and not to be proposed without their consent in a general congress."

The governor undertook—and with some success—to point out the many illustrations in the legislation of the colony of the recognition of the validity and force of acts of parliament. Among these he mentions the settlement of the crown upon William and Mary by an act of parliament, and the accom-

panying act of parliament by which oaths of allegiance to King James were discharged and provision made for oaths to King William and Queen Mary.

The assembly, replying to this address of the governor, argued that the words of limitation in the charter, upon the legislative power of the colonies —namely, that the laws made should not be repugnant to the laws of England—had relation to the great charter and other laws of England by which the lives, the liberties, and property of Englishmen were secured, and not to the general legislation of parliament. The right to be represented in the legislative body was asserted as a fundamental principle of the English constitution, and one that the parliament could not impair or disregard. The particular instances cited by the governor of submission by the colony to particular acts of parliament they met by the declaration that the accession of William and Mary, while not proclaimed by an act of the colony, was based upon the universal consent of the people. They declared that "a purely voluntary submission to an act, because it is highly in our favor and for our benefit, is in all equity and justice to be deemed as not at all proceeding from the right we include in the legislators, that thereby obtain an authority over us, and that ever hereafter we must obey them of duty." That while "they may have submitted, *sub silentio,* to some

acts of parliament, that they conceived might operate for their benefit, they did not conceive themselves bound by any of its acts which, they judged, would operate to the injury even of individuals." Concluding, they said: "We think your excellency has not proved, either that the colony is a part of the politic society of England, or that it has ever consented that the parliament of England or Great Britain, should make laws binding upon us, in all cases, whether made expressly to refer to us or not."

In the notes of Mr. Jefferson on the debate upon the adoption of the declaration of independence he represents John Adams, Lee, and others who favored the adoption, to have held this view of the powers of parliament: "That, as to the people or parliament of England we had always been independent of them, their restraints on our trade deriving effect from our acquiescence only and not from any rights they had of imposing them, and that so far our connection had been federal only and was now dissolved by the commencement of hostilities." The declaration itself makes no direct reference to parliament, but, in the schedule of the unlawful acts of the king, refers to the parliament in these terms: "He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation.

It would seem that, if any power to legislate for

the colonies was possessed by parliament, it would include the power to establish a system of import duties, common to them all—for this was a subject that colonial legislation could not adequately deal with; and yet the tea tax was generally resisted in the colonies as an invasion of their liberties.

Mr. Curtis, in his work on the Constitutional History of the United States, speaking of the colonial congress of 1774, says: "The second question related to the authority which they should allow to be in parliament; whether they should deny it wholly or deny it only as to internal affairs; admitting it as to external trade; and if the latter, to what extent and with what restriction. It was soon felt that this question of the authority of parliament was the essence of the whole controversy. Some denied it altogether. Others denied it as to every species of taxation; while others admitted it to extend to the regulation of external trade, but denied it as to all internal affairs." He adds that in view of the fact that the right of regulating the trade of the whole country could not be well exercised by the separate colonies the alternative was either to set up an American legislature that could regulate such trade or to give the power to parliament.

The congress, he says, determined to do the latter, thinking that they could limit the admission by denying that the power extended to taxation and admitting it only so far as was necessary to regulate the

external trade of the colony for the common benefit of the whole empire. "They grounded this concession," he says, "'upon the necessities of the case' and 'upon the mutual interests of both countries'" —meaning by this expression to assert that all legislative control over the external and internal trade of the colonies belonged of right to the colonies themselves.

It is difficult to conceive of any theory of the relation of the colonies to the mother country that will support the pretentions and resistance of the colonies throughout, except that which denies in toto the power of the parliament to legislate for the colonies. If the relation was as described in the debate upon the declaration of independence, from which I have quoted, and by Franklin—a federal one like that of England and Scotland before the union—then the British parliament had no authority to legislate for the colonies. Yet it is certain that many acts of parliament not involving taxation or revenues were recognized in the colonies—as an illustration, the act of 1766 forbidding the issue of legal tender paper by the colonies.

In an essay by a Virginian, published in London in 1701, the uncertainty of the law in the colonial age is thus described: "It is a great unhappiness that no one can tell what is law and what is not in the plantations. Some hold that the law of England is chiefly to be respected, and, where that is de-

ficient, the laws of the several colonies are to take place; others are of opinion that the laws of the colonies are to take the first place, and that the law of England is of force only where they are silent; others there are who contend for the laws of the colonies, in conjunction with those that were in force in England at the first settlement of the colonies, and lay down that as the measure of our obedience, alleging that we are not bound to observe any late acts of parliament in England except such only where the reason of the law is the same here that it is in England. But, this leaving too great a latitude to the judge, some others hold that no late act of the parliament of England do bind the plantations, but those only wherein the plantations are particularly named. Thus are we left in the dark in one of the most considerable points of our rights; and, the case being so doubtful, we are too often obliged to depend upon the crooked cord of a judge's discretion in matters of the greatest moment and value."

Perhaps the following is a fair summary of the colonial view, just prior to the revolution, as to the force of English statute law in the colonies:

First, the general statutes enacted before the institution of any government in the respective colonies were of continued obligation there, so far as they were applicable. This upon the principle that such laws were enacted by parliaments in which the col-

onists, being then residents of England, were represented.

Second, that no later act of parliament had any inherent validity in the colonies; but that the supreme legislative power was vested in the colonial legislature.

Certainly this is the view of the declaration of independence. The debate that preceded the formulation and general adoption of this view was long and heated. Particular acts of parliament were impeached on narrow grounds; but there was no holding ground short of the full denial of the power of parliament to legislate for the colonies. The parliament was not a representative body as to the colonies; and a system which recognized the right of parliament to legislate for the colonies was not a representative system of government. A just colonial system that should preserve by suitable limitations the imperial and general powers of parliament and reconcile them with free institutions in the colonies was not possible to that generation of Englishmen; and a system of parliamentary government without representation and without agreed limitations was impossible to that generation of Americans.

It will be noticed that very many of the grievances, catalogued in the declaration of independence, do not involve questions affecting the constitutional or charter rights of the colonies, but rather bad and

vindictive administration, and so a violation of natural rights. The English government in the colonies, as administered, subverted the true purposes of government, namely, to secure to the people the enjoyment of life, liberty, and the pursuit of happiness. It was not unlawful for the king to refuse his assent to laws, or to prorogue an assembly, or perhaps to fix another than the usual place for its assembling. But when these things were done, not in the exercise of a just discretion, but vexatiously to deprive the people of their rights or to coerce them into a surrender of them—to punish them for things lawfully done—the executive power was abused. This power was not to be directed by whim or malice; but like all other forms of government, for the public welfare. Protection was the condition of allegiance; when the existing government did not protect, the natural right became the supreme law. The resistance made by the colonies to the stamp tax, the tea tax, and other assertions of the powers of parliament, naturally brought on a conflict with the king and his governors, and this conflict marched in the familiar and inevitable lines—edict and proclamation, thundered against the town meeting and the assembly. The solitary and powerless civil governor was reinforced by ships and soldiers, and the town meeting became a training band—it only remained that these should meet and war was flagrant.

But there were some other constitutional rights that were invaded. The right to transport persons accused of crime to England for trial was asserted by the crown. The English cabinet issued orders directing Governor Barnard, of Massachusetts, to prosecute an inquiry into the conduct of some of the popular leaders in Massachusetts with a view to transporting them to be tried for their lives, under the pretended authority of a statute of Henry VIII. In 1772 royal instructions were issued to the governor of Rhode Island to organize a commission to inquire into the facts connected with the burning of the royal schooner "Gaspee." The governor was directed by the commission to arrest the parties and to send them with the witnesses upon a naval vessel to England for trial. The colonial assembly, upon the appeal of the governor and Chief Justice Hopkins, referred the matter to the discretion of the chief justice, who declared that he would not give an order to arrest any person for transportation to England for trial. The commission, in its report, condemned the conduct of the commander of the "Gaspee," and after much passion had been excited by this high-handed invasion of the right of trial, the matter was dropped. The result of these attempts was widespread excitement and indignation in the colonies. The Virginia house of burgesses, on the sixteenth of May, 1769, passed a resolution declaring that "all trials for treason, misprision of

treason, or for any felony or crime whatsoever, committed and done in his majesty's said colony and dominion, by any person or persons residing therein, ought of right to be had and conducted in and before his majesty's courts, held within his said colony, according to the fixed and known course of proceeding," and that the "sending such person or persons to places beyond the sea to be tried is highly derogatory of the rights of British subjects, as thereby the inestimable privilege of being tried by a jury from the vicinage, as well as the liberty of summoning and producing witnesses on such trial, will be taken away from the party accused."

In 1770 the privy council inaugurated a series of royal instructions which ruthlessly disregarded not only the usages of the colonies but directly set at naught the provisions of the colonial charters. They proceeded upon the theory that these royal instructions had the force of law and practically asserted an unlimited and arbitrary power in the crown.

In 1772 Governor Hutchinson, of Massachusetts, under instructions from the crown, refused to receive his salary from the legislature, and the judges' salaries were also ordered to be paid out of the crown treasury. This was regarded as making these officers dependents of the crown and freeing them from that restraint which the power to vote their salaries in the general court imposed. This "indefinite, imperious and mysterious," as Mr. Frothing-

ham calls it, assertion of the royal prerogative seemed to put every right in jeopardy.

The passage of laws vesting the nomination of the council in Massachusetts in the crown, investing the governor with the power to appoint and remove judges of the inferior courts and other minor officers, and the governor and council with power to appoint sheriffs who were to select the juries, forbidding town meetings except for the choice of officers, without the permission of the governor, and providing for the transportation of offenders and witnesses to other colonies or to England for trial, was a complete and undeniable expression of the purpose of the English government to overthrow not only local government, but liberty, in the colonies.

It was said, even in the house of lords, that these acts invested "the governor and council with powers with which the British constitution had not trusted his majesty and his privy council"; and that "the lives, liberties and properties of the subject were put into their hands without control."

# EARLY ATTEMPTS AT UNION AND THE UNION DE FACTO

## FOURTH LECTURE

**Delivered at Stanford University, April 2, 1894**

I desire to call your attention first to some of the efforts that were made to effect a union of the English colonies in America, upon the basis of a continued allegiance to the British crown.

The first American confederation was of certain of the New England colonies, and took form in 1643. At that time New York, a Dutch province, intervened between New England and the middle and southern English colonies, while Canada, a French possession on the north, was a special menace to New England. Serious disputes as to settlements and boundaries had arisen with the Dutch; and the purpose of the French to restrict, if not to subdue, the English colonies, was not concealed. The Indians, especially the Narragansetts, a near and strong tribe, had become unfriendly and were threatening the settlements. The dangers were

common and imminent, and the conditions out of which they grew lasting. Not one campaign, but many; not the foreseen, but the unforeseen also, must be provided for. England was wasted by civil war; and the king was thinking of his crown, not of his provinces. His military resources were overtaxed in the defense of his prerogative at home and of his life. Neither English money nor English troops, neither English direction nor leadership was available to the New England colonies. The federation was as natural and reasonable as a block house in a frontier village. The articles of union were subscribed by the representatives of Massachusetts, New Plymouth, Connecticut and New Haven. Rhode Island, with Connecticut and New Haven, had three years before united in a joint letter to the general court of Massachusetts, suggesting a confederation; but poor little Rhode Island, upon the spiteful objection of Massachusetts, was not allowed to enter the confederation that was formed. These articles of union are of great interest; but we have time to notice only a few of their most important provisions. A common name was assumed: "The United Colonies of New England." The things that are not said in these articles are quite as noticeable as the things that are said. No reference whatever is made to the crown, save by this recital in the preamble:

"And seeing by these sad distractions in England,

which they have heard of, and by which they know we are hindered from that humble way of seeking advice or reaping those comfortable fruits of protection which at other times we might well expect."

Neither the taking effect of the articles nor the continuance of the confederation is made dependent upon the consent of the king. The confederation was not limited to the exigency described in the preamble, but was expressly declared to be perpetual. It was "for mutual help and strength in all our future concernments." The league was described as "a firm and perpetual" one; and, in the twelfth and last article, it is called "this perpetual confederation." It was instituted for "offense and defense, mutual advice and succor, upon all just occasions; both for preserving and propagating the truth and liberties of the gospel, and for their own mutual safety and welfare." If any one of the colonies should be invaded "by any enemy whomsoever" the other members of the confederation were required forthwith to send aid to the "confederate in danger." The expenses of the confederation were apportioned. Its affairs were to be managed by two commissioners from each colony, who were to bring from their respective general courts full power "to hear, examine, weigh and determine all affairs of our war or peace, leagues, aids, charges and numbers of men for war, division and spoils and whatsoever is gotten by conquest, receiving of more

confederates for plantations into combination with any of the confederates, and all things of like nature which are the proper concomitants of consequence of such a confederation, for amity, offense and defense." There was to be no intermeddling with the government of any of the jurisdictions, which by the third article is preserved entirely to themselves. Six of the eight commissioners were empowered to determine any matter presented; but if six did not agree, then the matter was to be referred to the general courts of the confederated colonies. The commissioners were to meet once every year; provision was made for extraordinary sessions and the places of meeting designated. No colony was allowed to declare or undertake a war, except upon sudden exigency, without the consent of the commissioners or of six of them.

But the purposes of the confederation were not, as I have said, limited by the occasion which suggested it, viz., the unfriendly and hostile attitude of their neighbors. The commission was required by the eighth article "to frame and establish agreements and orders in general cases of a civil nature wherein all the plantations are interested for preserving peace among themselves and preventing as much as may be all occasions of war or difference with others, as about the free and speedy passage of justice in every jurisdiction, to all the confederates equally as their own, receiving those that re-

move from one plantation to another without due certificates." Provision was also made for the rendition of servants and of prisoners fleeing from one jurisdiction into another. The annexation, by royal decree, of New Haven to Connecticut extinguished one of the parties to this compact of government; but the agreement was revised and continued as a league of three colonies, with occasional meetings of the commissioners, until 1684, when the charter of Massachusetts was annulled. The united colonies, through the commissioners, exercised the sovereign power of war and peace, conducted negotiations with the Indians, the French and the Dutch, adjusted a boundary dispute between New Haven and New Netherland, and exercised the highest powers of government; and by this early experiment confirmed the opinion of the necessity and usefulness of a union of the colonies. The powers of the commissioners under this confederation were quite similar to the powers of the congress under the later confederation of the thirteen colonies. Both were leagues of friendship instituted for the general welfare and defense. The provision that no colony should engage in war, without the consent of the others, except upon an exigency, was quite like the article of the later confederation upon the same subject. The New England league has a suggestion also of the provision of the federal constitution that the citizens of each

state shall be entitled to all the privileges and immunities of the citizens of the several states, and of the provisions for the rendition of criminals and fugitives from labor. The provision that no members should be admitted to the confederation, nor any other plantation be received by any of the united colonies, nor any two of the colonies united in one jurisdiction without the consent of the rest, is quite suggestive of section 3 of article IV of the constitution, which provides that new states may be admitted by congress, but that no new states shall be formed within the jurisdiction of any other state nor by the conjunction of two states or parts of states without the consent of congress. An equal voice was given to the colonies, in the joint meetings, though they differed so widely in population and wealth, Massachusetts having fifteen thousand out of an aggregate population of twenty-four thousand. This plan of representation was followed in the congress of 1774, passed into the articles of confederation and continued to be used until the adoption of the national constitution. The contest that afterward became so threatening between the larger and the smaller colonies had its earliest manifestation in this earliest confederation. The efforts of Massachusetts to exert more than the prescribed influence in the New England confederation was sharply resented by the smaller colonies.

The confederacy was—not unnaturally, and in

spite of the loyal protestations of the colonial authorities—regarded by the crown as a movement full of danger to the royal authority. The commissioners of Charles II arraigned the confederation as illegal, holding that there was no right conferred upon any of the colonies by charter "to incorporate with the other colonies, nor to exercise any power by that association"; both of these powers belonging to the king's prerogative. The answer of the Massachusetts general court declared that this charge was "contrary to the light of reason that allows all whose journey's end is the same and whose way lies together to combine for their mutual help in all things common and just, without the least suspicion of taking upon them any usurped authority."

Mr. Frothingham says of this confederation: "The powers reserved to each jurisdiction proved impracticable, and the provisions to promote the common welfare were crude. Notwithstanding these vital defects, the service which the confederacy rendered was never forgotten: It was referred to in every period of the colonial age; and in seasons of peril there was a call for its revival. The embodiment of the idea of union was imperfect; but the principle of the equality of distinct jurisdictions, the inviolability of their local governments, and the aim of providing one system of law,

securing to the people of all the colonies their rights, became fundamentals of a republican polity."

It is probable—at least that is the view most generally taken by the historians—that in forming this union no thought of independency or of a separation from the English crown was in the minds of its promoters. The suggestions they followed were, as I have said, the natural outgrowth of conditions; and that these conditions were pregnant of further suggestions of a larger union and of separation from the crown was yet to be unfolded. Yet it is true, as was said by John Quincy Adams, in his discourse on the New England confederacy, delivered in 1843, that the confederation was "the exercise of sovereign power in its highest attributes." There was no declaration against the king in the articles, but he was wholly left out of them.

Upon the accession of Charles II to the throne, the advantage of a union of the English colonies in America from a royal standpoint was recognized. The hostile environment of the colonies menaced England through them. A union of forces and of resources was needed by the colonists for the protection of their lives and property; by the king for the defense of his dominions. The advantage of taking the direction of the movement was apparent; and, in 1660, Charles organized a commission for the purpose of bringing the scattered colonies into a "more certain civil and uniform gov-

ernment." James II, pursuing the same line, planned to unite the colonists between the Delaware and the St. Lawrence under one royal governor and a single legislative council to be appointed by the king, but was deposed before the plan was executed. These incidents and others of a later date of the same character are worthy of note as admissions by the crown of the advantage of a union of the colonies under one resident executive and one council or congress. This sentiment was expressed in 1696 by the lords of trade and plantations thus: "We humbly conceive that the strength of the English there [in America] can not be made use of with that advantage it ought for the preservation of those colonies, unless they be united."

In 1677 a joint conference was held at Albany by Virginia, Maryland and New York with the Seneca Indians; and in 1684 another congress, in which Massachusetts participated with the colonies named, was held at the same place with the Five Nations of Indians. In 1690 the general court of Massachusetts, moved by the massacre at Schenectady, invited "New York, Virginia and Maryland, and parts adjacent" to meet the New England colonies in a conference to organize the common defense. Only Massachusetts, Plymouth, Connecticut and New York were represented in the conference which was held in New York. Plans of defense were discussed covering the northern frontier, and

an organization of the military forces, to be contributed by each, was agreed upon. Mr. Bancroft and other historians characterize this assemblage as the first American congress.

About the same time William Penn appeared before the lords of trade and plantations with a suggestion of a plan of union of the colonies which was afterward presented by him in writing, and embraced the following provisions: First, that the several colonies, by appointed deputies, should meet once a year in time of war and once in two years in time of peace, to debate and resolve measures for their "better understanding and the public tranquillity and safety," and particularly to adjust matters of difference between province and province relating to debtors or fugitives from justice fleeing one province to the other, disputes as to commerce and matters relating to the defense of the provinces against public enemies; that this conference or congress should be presided over by the king's commissioner, and that in time of war, the king's high commissioner should be commander-in-chief of the forces organized for defense.

A memorial by the general court of Massachusetts to the king, in 1696, proposed that the royal governor of Massachusetts should also be the civil governor of New York and New Hampshire, and general of all the forces of Massachusetts, New York, New Hampshire, Connecticut, Rhode Island

and the Jerseys. This project was naturally resisted by the agents of Connecticut, New Hampshire and New York. But a distinguished writer says: "This line of recommendation had so much weight with the lords of trade, and harmonized so completely with their views and designs that a remodeling of the internal affairs of the colonies and unity became at length the corner-stone of their policy."

In reporting upon the matters submitted the lords of trade said: "We now humbly crave leave to add that the distinct proprieties, charters and different forms of government in several of those neighboring colonies, make all other union except under such a military head (in our opinion) at present impracticable."

The recommendation submitted was that the king should appoint a suitable person to be governor of the provinces of New York, Massachusetts Bay and New Hampshire and that he should be also captain general of all the king's forces in the colonies named, as also in Connecticut, Rhode Island and the Jerseys, the chief residence of the governor to be at New York. The report concluded as follows: "And, in the last place, we are also humbly of the opinion that the general assemblies of all those neighboring colonies, by the prudent conduct of such a captain general, may be made to understand their own true interests and thereby induced

to enact such laws in their respective governments as shall be necessary to enable the said captain general to execute your majesty's commissions so as shall be most for your majesty's service, their own defense and general advantage."

Lord Bellomont was accordingly commissioned captain general over the provinces of Massachusetts, New Hampshire, New Jersey and New York.

Many plans of union were, during these protracted discussions, propounded in pamphlet and memorial; and in the course of the discussion, some of those elements of division which afterward appeared so threateningly in the continental congress and in the constitutional convention are disclosed—especially that of the basis of representation in any general congress or council, and a jealousy as to the place of its assemblage.

The lords of trade in 1721, in a report to the king on colonial affairs, adopted the suggestion that all of the provinces from Nova Scotia to South Carolina should be put under the government of "one lord lieutenant or captain general from whom all other governors of particular provinces should receive their orders in all cases for your majesty's service, and cease to have any command respectively in such province where the said captain general shall at any time reside." The captain general was to be attended by two or more councilors deputed by each plantation.

All of these efforts by the crown to effect a consolidation of the colonies were intended, first, to make a more effective use of the military resources of the colonies against the king's enemies, and second, to curb, by the institution of a stronger royal government, the increasing demands of the colonists for a fuller control of their own affairs—or, as a writer of the time expressed it, to "prevent them from setting up for an independency of government, to the unspeakable loss and detriment of the kingdom." But the colonists were all the while, and very naturally, looking at this question from an American standpoint. And, running through this whole period, conferences between the governors or delegates appointed by the different colonies, to take into consideration the threatening attitude of the French and Indians, to confer with friendly tribes, to arrange the quota of men and supplies of the several colonies, and other such matters of common interest, were frequent. A correspondence, too, sprang up between the governors—and even between the general assemblies, without the concurrence of the governors—in which all these and other matters of common interest were the subject of conference.

In September, 1753, the lords of trade directed the governors of the provinces to appoint commissioners with a view of holding a conference and negotiating a treaty with the Six Nations in order

to prevent them from aiding the French. This has been described as the "second call for an American congress, based upon the principle of representation." The congress convened at Albany in June, 1754, and was composed of commissioners from Massachusetts, New Hampshire, Connecticut, Rhode Island, Pennsylvania, Maryland and New York. Benjamin Franklin was a member. One of the objects of the congress, as stated in the call, was to determine whether the colonists would "enter into articles of union and federation with each other for the mutual defense of his majesty's subjects and interests in North America as well in times of peace and war." It was resolved unanimously that a union of the colonies was necessary, and a committee was appointed to examine the plans of union offered and to report a plan. Of this committee Franklin was a member. A plan prepared by him was submitted, and the congress directed that copies of it should be sent to the respective colonies, to those not represented as well as to those present by delegates, for such suggestions as might be made; the purpose being afterward to submit the plan to parliament for enactment into law. Franklin had, previous to the meeting of the congress, prepared what he called short hints toward a scheme for uniting the northern colonies. The device appended was a serpent separated into parts, each part representing a colony and over it the motto, "Join or

Die." These hints were the basis of the plan submitted by him to the congress. This scheme of government is especially worthy of attention; first, by reason of its distinguished authorship; and second, by reason of some special provisions of it which, after long resistance, found effective expression in the constitution of 1787. It will be remembered that Franklin, in his old age, was a member of the convention of 1787 also.

The plan contemplated, as I have said, an act of parliament to give it effect and was intended to organize one general government which should include all the colonies; "within and under which government each colony (as it was expressed) may retain its present constitution, except in the particulars wherein a change may be directed by the said act." The scheme was briefly this: A president general was to be appointed and paid by the crown; and a grand council was to be chosen by the representatives of the people of the colonies in their respective assemblies. This council was to consist of forty-eight members. The representation of the several colonies was not, as in the New England confederation, and afterward in the revolutionary congresses and in the articles of confederation, equal; but a specific apportionment was made which gave to Massachusetts Bay and Virginia seven members, to Connecticut and New Hampshire two each, and to the other colonies numbers in proportion to

their importance. Twenty-five members were to constitute a quorum, provided there were among them one or more representatives from a majority of the colonies. A new election was provided for at the end of three years, when the apportionment of the members was to be upon the basis of the money contributions of the respective colonies to the general treasury; no colony, however, to have more than seven or less than two representatives. All acts of the general council were made subject to the assent of the president general; and, in the discussions upon the plan, this provision was construed to require the assent of the president to the selection of a speaker of the council. The council was to meet once every year, and could not be dissolved, nor prorogued; nor continued in session longer than six weeks at one time, without their own consent or the special direction of the crown. The powers of this general government were: To make all Indian treaties affecting the general interest; to make peace or declare war with the Indian tribes; to make such laws as were necessary for regulating Indian trade; to make all purchases from the Indians of lands not within the bounds of particular colonies; to make new settlements upon such purchases, by granting lands in the king's name; and to make laws for governing such new settlements till they should be formed into particular governments; to raise and pay soldiers, build forts and equip vessels;

to guard the coast and protect trade. It was declared that for these purposes "they have power to make laws and lay and levy such general duties, impost or taxes as to them shall appear most equal and just, considering the ability and other circumstances of the inhabitants in the several colonies." A general treasurer and a particular treasurer for each colony were to be selected by the president and general council to receive the taxes levied. The joint order of the president and council was made necessary to the expenditure of money. All military officers were to be nominated by the president general and confirmed by the grand council before they were commissioned; and all civil officers were to be nominated by the grand council and to be approved by the president general before they entered upon their offices.

Unlike the New England confederation and the confederation of the revolution this plan did not propose a league or confederation; but instituted a general government that acted, not upon constituent states, but directly upon the people of all the colonies. The laws made by the president and council, within the powers committed to them, were the supreme laws of the land. The revenues for supporting the general government proposed were to be levied and collected by it and taken into its own treasury. In all matters not expressly confided to the general government the separate autonomy and

administration of each colony were preserved. In a word we have here the principle which, after years of heated discussions and threatening divisions, was finally adopted in our national constitution. The proposition was premature; but it was a seed that was to have glorious fruitage. It was a rejected stone that was yet to become the chief corner-stone.

Power is never graciously surrendered and the colonies did not surrender to the general government powers which they had long exercised until they had been brought, under the Providence of God, to the inexorable contingency of the loss of all the powers of free government or the surrender of such part thereof to the general government as was necessary to the establishment and equipment of a nation. Writing after the adoption of the constitution, of this Albany plan, Franklin says: "On reflection it now seems probable, that, if the foregoing plan, or something like it, had been adopted and carried into execution, the subsequent separation of the colonies from the mother country might not so soon have happened, nor the mischief suffered on both sides have occurred, perhaps, during another century." How far the thought of Franklin was, in some respects, in advance of that of his contemporaries is shown by the fact that the Albany plan, when submitted to the several colonies, did not secure the approval

of a single one. The objections to it were various, and some of them were good. The power of parliament, impliedly recognized in the very opening paragraph, to make changes in the present constitutions of the colonies would lay them open to an unrestricted invasion of their liberties. The absolute negative of the president general upon all acts of the council gave too much power to the king's agent; but, after all, the most potent influence in the firm and unanimous rejection of this scheme is to be found in the unwillingness of the colonies to admit of any general government that should act directly upon the citizen. The fact that, when threatened by armies and fleets, they would only give to the confederation advisory powers shows how tenaciously the colonies held on to all taxing power. At the root of this objection lay that dominant principle of English and American civil life—the love of local control. The idea of subjecting the citizen or his property to the direct control of any power outside of the colony was repugnant to the people.

Franklin, speaking further of the plan, in the same note from which I have just quoted, says: "The crown disapproved it as having too much weight in the democratic part of the constitution; and every assembly as having allowed too much to prerogative; so it was totally rejected."

Of this plan, Mr. Bancroft says: "This plan,

which foreshadowed the present constitution of the Dominion of Canada and the federation which with hope and applause was lately offered by rival ministries to South Africa, was at that day rejected by the British government with abhorrence and disdain."

The failure of all these efforts to organize a union of the colonies under the crown might have been easily predicted. The plans were bottomed upon an act of parliament, which involved a broad admission of the power of parliament to legislate for the colonies, and left the organic act open to amendment by the same authority. From this time forward the efforts for a union of the colonies were to find their suggestion, not in the fear of the French or of the Indian, but of England—the mother country—and to have for their object a redress of civil injuries involving the liberties of all the colonies.

The efforts of the crown were now naturally to divide, not to unite, the colonies. The conquest of Canada had destroyed the English interest in the increase of the military strength of the American colonies—to repress and diminish it was henceforth the English policy. But as the interest in a union of the colonies waned in England it increased in America.

The stamp act, and the accompanying declaratory resolves affirming the power of parliament to tax

the colonies resulted in a congress which assembled in the city hall in New York on October 7, 1765. The movement for this congress had its origin in Massachusetts. In May, 1764, a meeting was assembled in Boston to instruct the delegates of that town to the general court, to remonstrate against the powers assumed and declared by parliament. The resolutions concluded with these words: "As his majesty's other northern American colonies are embarked with us in this most important bottom, we further desire you to use your endeavors, that their weight may be added to that of this province; that, as by the united application of all who are aggrieved, all may happily obtain redress."

A committee of the general court was appointed to correspond with the other colonies and to request their co-operation in such measures as might be necessary to present effectively the opposition to the stamp act. The other colonies generally acted, but separately, in presenting their remonstrances to the crown; but, in spite of these, the stamp act received the royal assent March 22, 1765.

On the eighth of June following, the legislature of Massachusetts issued a circular proposing a meeting of committees from the houses of representatives "or burgesses of the several British colonies on this continent, to consult together on the present circumstances of the colonies, and the difficulties to which they are and must be reduced by the operation of

the acts of parliament for levying duties and taxes on the colonies." It proposed that the meeting should be held in New York on the first Tuesday in October, and invited the appointment of delegates by the other colonies.

The congress assembled in October and was composed of twenty-eight delegates, nine colonies being represented. The other four, however, sympathized with the movement, though they did not choose representatives. The colonies represented were Massachusetts, South Carolina, Pennsylvania, Rhode Island, Connecticut, Delaware, Maryland, New Jersey and New York. The congress agreed, after being in session eleven days, upon a declaration consisting of a preamble and fourteen resolutions, and prepared an address to the king, a memorial to the house of lords, and a petition to the house of commons. They denied the power of parliament to tax the colonies without their consent, affirmed that representation in the house of commons was not practicable, and therefore that taxes could only be imposed by their own legislatures. These resolutions and memorials were signed by the representatives of six of the colonies present; and Connecticut and South Carolina, which had not authorized their representatives to sign, afterward gave their concurrence. The New York assembly, while approving the representation of the colony in the congress, sent a separate petition to the king. This congress did not pro-

pose or set up any union of the colonies. It was called for the sole purpose of giving a joint expression of the grievances complained of and a united remonstrance against them.

The union began with the next continental congress—that of 1774,—and has had, under the revolutionary—which was its first form—the confederacy, and the constitution, continuance and succession to this hour.

The revolutionary government practically began with the assembling of congress on the fifth day of September, 1774, at Carpenter's hall, Philadelphia, and continued until the articles of confederation went into effect.

Delegates were present from New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, from the city and county of New York, and other counties in the province of New York, from New Jersey, from Pennsylvania, from New Castle, Kent and Sussex, in Delaware; from Maryland, from Virginia, and from South Carolina.

The powers of this congress are to be gathered from the credentials or commissions the delegates brought with them.

The credentials of the New Hampshire delegates empowered them "to devise, consult, and adopt such measures as may have the most likely tendency to extricate the colonies from their present difficulties;

to secure and perpetuate their rights, liberties and privileges, and to restore that peace, harmony and mutual confidence which once happily subsisted between the parent country, and her colonies."

The objects were stated in the Massachusetts credentials as follows: "To consult upon the present state of the colonies, and the miseries to which they are and must be reduced, by the operation of certain acts of parliament respecting America, and to deliberate and determine upon wise and proper measures, to be by them recommended to all the colonies, for the recovery and establishment of their just rights and liberties, civil and religious, and the restoration of union and harmony between Great Britain and the colonies, most ardently desired by all good men."

From Rhode Island the credentials ran as follows: To join the other colonies "in consulting upon proper measures to obtain a repeal of the several acts of the British parliament, for levying taxes upon his Majesty's subjects in America, without their consent, and particularly an act lately passed for blocking up the port of Boston, and upon proper measures to establish the rights and liberties of the colonies, upon a just and solid foundation."

The credentials from Connecticut were broader, viz.: "to consult and advise with the commissioners or committees of the several English colonies in

America on proper measures for advancing the best good of the colonies."

The resolve of Pennsylvania was that "there is an absolute necessity that a congress of deputies from the several colonies, be held as soon as conveniently may be, to consult together upon the present unhappy state of the colonies, and to form and adopt a plan for the purposes of obtaining redress of American grievances, ascertaining American rights upon the most solid and constitutional principles, and for establishing that union and harmony between Great Britain and the colonies, which is indispensably necessary to the welfare and happiness of both."

Delaware stated the evils to be remedied with more particularity; the object stated in the preamble of the resolution of appointment being to take into consideration "the several acts of the British parliament, for restraining manufactures in his Majesty's colonies and plantations in North America,—for taking away the property of the colonists without their participation or consent,—for the introduction of the arbitrary powers of excise into the customs here,—for the making of all revenue causes triable without jury, and under the decision of a single dependent judge,—for the trial, in England, of persons accused of capital crimes, committed in the colonies,—for the shutting up the port of Boston,—for the new-model-

ing the government of the Massachusetts Bay; and the operation of the same on the property, liberty and lives of the colonists.

The commission of the delegates from Maryland ran: "To effect one general plan of conduct, operating on the commercial connection of the colonies with the mother country, for the relief of Boston and preservation of American liberty."

The object was stated in the Virginia resolutions to be "to consider of the most proper and effectual manner of so operating on the commercial connection of the colonies with the mother country, as to procure redress for the much injured province of Massachusetts Bay, to secure British America from the ravage and ruin of arbitrary taxes, and speedily to procure the return of that harmony and union, so beneficial to the whole empire, and so ardently desired by all British America."

The South Carolina resolution ran as follows: "To consider the acts lately passed, and bills depending in parliament with regard to the port of Boston and colony of Massachusetts Bay, which acts and bills in the precedent and consequences affect the whole continent of America—also the grievances under which America labors, by reason of the several acts of parliament that impose taxes or duties for raising a revenue, and lay unnecessary restraints and burdens on trade; and of the statutes, parliamentary acts, and royal instructions, which make an

invidious distinction between his Majesty's subjects in Great Britain and America, with full power and authority to concert, agree to, and effectually prosecute such legal measures, as in the opinion of the said deputies, shall be most likely to obtain a repeal of the said acts, and a redress of those grievances."

The delegates from North Carolina appeared in the convention on the fourth day of September and their credentials authorized them "to deliberate upon the present state of British America, and to take such measures, as they may deem prudent, to effect the purpose of describing with certainty the rights of Americans, repairing the breach made in those rights, and for guarding them for the future from any violations done under the sanction of public authority."

The plan of giving to each colony one vote in the congress was agreed upon on the second day of the meeting, September sixth; but it appears, from the resolution adopted, that the plan was not assumed to be just or permanent; but was adopted for the time being and until the data necessary to the establishment of a proper basis of representation could be gathered. The resolution was as follows: "That in determining questions in this congress, each colony or province shall have one vote, the congress not being possessed of or at present able to procure proper materials for ascertaining the importance of each colony."

The union was expressed by the act of sending delegates; and the powers exercised by the congress rested wholly upon the acquiescence of the people. Mr. Story says that it "exercised, *de facto* and *de jure,* a sovereign authority; not as the delegated agents of the governments of the colonies *de facto,* but in virtue of original powers derived from the people."

The principal work of this congress was the restatement of the rights and grievances of the colonies, the preparation of further petitions and addresses looking to the correction of these evils, and a resolve against the importation of British goods and the exportation of merchandise to Great Britain. Articles of agreement to carry this resolution into effect were signed, and commercial retaliation inaugurated. A general congress to assemble in May, 1775, was recommended.

The delegates to the congress of 1775 were principally chosen by conventions of the people; and upon assembling—the petitions of the prior congress to the king having been rejected, and war inaugurated—a state of war was accepted on behalf of the colonies; a continental army was organized, and Washington commissioned as commander-in-chief. The congress authorized the issuing of bills of credit, to the redemption of which the faith of the colonies was pledged; framed articles of war for the government of the army; created a

general postoffice; apportioned the cost of the war among the colonies; authorized and prepared regulations for a continental navy; and recommended, to the colonies asking advice, the organization of state governments.

The next important act affecting the relation of the colonies to each other and to the world was the declaration of independence.

It is well, I think, to state and emphasize here two or three historical facts of the highest significance, in the study of constitutional law:

First. Union preceded independence, and was by every American recognized to be a necessary antecedent.

Second. Independence was declared by the people of "the united colonies," achieved by the arms of the people of the "United States," and confirmed by treaties signed by the ambassadors of the United States.

Third. The state governments were organized in the union and as a part of it. The states never were independent states, except as constituent parts of a free nation. No one of them was ever recognized as an independent state by any other state or kingdom in the world; no one of them ever sent or received an ambassador; no one of them ever unfurled a flag that was saluted on the sea. As colonies they had numerous agents in London; but, only as the United States of America, an ambassador. Inde-

pendence was as impossible to the individual colony after Yorktown as before Bunker Hill. Union was as essential to the permanence as to the procurement of independence. Paine said truly that nothing but a continental form of government can "keep the peace of the continent."

It was implied, from the first association of the colonies in a continental congress, that general powers must be exercised by and through a general government. It was years before this necessary implication was fully declared in the constitution; but each of those years made the conclusion more certain.

In his Commentaries on the Constitution, Judge Story says: "In the first place, antecedent to the declaration of independence, none of the colonies were or pretended to be sovereign states, in the sense in which the term 'sovereign' is sometimes applied to states. * * * So far as respects foreign states the colonies were not, in the sense of the laws of nations, sovereign states, but mere dependencies of Great Britain. They could make no treaty, declare no war, send no embassadors, regulate no intercourse or commerce, nor in any other shape act, as sovereigns, in the negotiations usual between independent states. In respect to each other they stood in the common relation of British subjects. The legislation of neither could be controlled by any other; but there was a common sub-

jection to the British crown. If in any sense they might claim the attributes of sovereignty it was only in that subordinate sense to which we have alluded, in exercising, within a limited extent, certain usual powers of sovereignty. They did not even affect to claim a local allegiance."

And of the declaration of independence he says: "It was an act of original, inherent sovereignty by the people themselves resulting from their right to change the form of government and to institute a new one whenever necessary for their safety and happiness. So the declaration of independence treats it. No state has presumed of itself to form a new government or to provide for the exigencies of the times without consulting congress on the subject; and, when they acted, it was in pursuance of the recommendation of congress."

Charles Cotesworth Pinckney, speaking of the declaration of independence in the legislature of South Carolina, in 1788, says: "The several states are not even mentioned by name in any part, as if it was intended to impress the maxim on America that our freedom and independence arose from our union and that without it we could never be free or independent. Let us then consider all attempts to weaken this union, by maintaining that each state is separately and individually independent, as a species of political heresy, which can never bene-

fit us, but may bring on us the most serious distresses."

But, clear as these propositions are, historically and legally, the mischievous doctrine that the union is a mere confederation of independent states—with its corollary that each state may declare an infraction of the federal compact and withdraw from the union at its pleasure—found root and sustenance in the sectional interests which human slavery engendered; and brought upon the nation the "serious distresses" which the eloquent South Carolinian foresaw and deprecated.

Mr. Story closes the discussion of this question in the following words: "Whatever, then, may be the theories of ingenious men on the subject it is historically true that before the declaration of independence these colonies were not, in any absolute sense, sovereign states; that that event did not find them or make them such; but that at the moment of their separation they were under the dominion of a superior controlling national government whose powers were vested in and exercised by the general congress with the consent of the people of all the states."

The grievances set forth in the declaration are scheduled as common ills, though some of them had only touched individual colonies. They were common because the people of all the colonies were one people.

# THE CONFEDERATION

## FIFTH LECTURE

Delivered at Stanford University, April 9, 1894

Confederation was a fact before independence was declared; but it was a confederation for the redress of grievances, not for independence. The remonstrances still proceeded upon the theory that a benevolent king was being misled by wicked ministers. In the general order issued by Washington, upon the evacuation of Boston, he speaks of the ministerial army, not the royal army. In fact, King George was the real enemy. It was his proud and resentful spirit that sent British soldiers and ships to our shores and reinforced them with mercenaries hired from continental rulers. But, under the rough touch of war, the veneer of royalty disappeared, and at last the conservative and the timid were brought to see that a confederacy for independence, supported by a war against the king, was essential. A delegate declared "we must apply for pardon if we do not confederate"; and to the ex-

hortation of another, "we must hang together," Franklin replied, "Yes, or hang separately."

A declaration of independence, in the nature of a formal announcement of the severance of the political ties which had bound the colonies to the crown, was the necessary preface of the articles of confederation. Only a free people can act in the organization of a government. "Off with the old; on with the new" was the natural order; but it was not an easy transition. The attachment of the colonies to the mother country was stronger than they had themselves realized; and the fear that the associated colonies were too weak to organize a stable and successful government was strong in the hearts of many. John Adams, speaking of his experience in the congress of 1775, said: "But now these people began to see that independence was approaching, they started back. In some of my public harangues, in which I had freely and explicitly laid open my thoughts, on looking around the assembly I have seen horror, terror and detestation strongly marked on the countenances of some of the members."

On the eleventh day of June, 1776, a committee of congress was appointed to prepare a declaration of independence; and, on the same day, a resolution was passed for the organization of a committee to prepare articles of confederation. The work of the first committee had been well outlined, and an

agreement as to grievances was not difficult. These had been many times scheduled in the petitions and addresses of the colonies and of congress. The hesitation was over the deduction, not over the premises; not that the deduction was not logical and imperative, but that it was so tremendous. The work of the committee charged with the preparation of articles of confederation was, on the other hand, one of great delicacy and difficulty. Less than a month sufficed for the preparation, adoption and signing of the declaration of independence; but nearly a year and a half intervened between the appointment of the committee to prepare articles of confederation and their adoption by congress. It was not until the fifteenth of November, 1777, that congress gave its approval to the report of the committee. The subject was not, of course, in this interval, continuously under debate. Time and again the debate led up to difficulties that seemed so insurmountable, and differences so irreconcilable, that the subject was laid aside. The longest such interval was from August, 1776, to April, 1777, during which time the question was not debated in congress. When the articles had received the concurrence of congress they were sent to the states for approval, accompanied by an eloquent and urgent letter which concluded with this appeal: "Let them be examined with a liberality becoming brethren and fellow-citizens, surrounded by the same

imminent dangers, contending for the same illustrious prize, and deeply interested in being forever bound and connected together by ties the most intimate and indissoluble. And finally let them be adjusted with the temper and magnanimity of wise and patriotic legislators who, while they are concerned for the prosperity of their own more immediate circle, are capable of rising superior to local attachments, when they are incompatible with the safety, happiness and glory of the general confederacy."

The debate was now transferred to the states; and many objections were made, and many amendments proposed. It was not until July 9, 1778, that the articles were engrossed for signing and the first signatures attached. Several states signed on that day, and others at short intervals, as the delegates were thereto authorized; and, before January 1, 1778, eleven states had signed. Delaware and Maryland still held aloof, insisting upon their objections—chiefly upon a settlement as to the western boundaries of the colonies, and the recognition of the principle that the crown lands became the common property of all the colonies. Delaware came in in February, 1779; and Maryland—finally persuaded, under stress and urgency which now broke singly upon her, to defer the settlement of the land question and to confide in the justice and generosity of the larger colonies—signed March 1, 1781.

The ratification of the articles of confederation, therefore, dates from March 1, 1781. Twelve states had previously signed; but the articles contained no provision for their taking effect without the assent of all the colonies. It was thus nearly six years after the battle of Lexington, four years and eight months after the declaration of independence, and only about eighteen months before the preliminary treaty of peace, that a written constitution was adopted by all the colonies.

A union for the purpose of defense against a common present enemy is instinctive—a matter of impulse, which we share with the brutes. We leave our humble brother a little way when we make the alliance an offensive, defensive one, and altogether, when we organize a permanent union to promote the uses of peace. Here the highest intelligence and something higher than intelligence—unselfishness, a regard for others, an appreciation of the common good, as the highest good, is essential. The history of the colonies had been characterized by a constant struggle for local government. The affections of the people had centered there. It had been the source of their most prized blessings, and, as they believed, their defense against tyranny. Their experience of government outside the colony had been a sad one. It had always taken the form of oppressive and selfish meddling. It had been often brutal; and had become the object of their

watchful jealousy. Of a beneficent and central representative government, that should leave all local matters in local control, while administering common affairs for the common good, they had had no experience, and the world none that was satisfactory. Mr. Bancroft well says: "They had rightly been jealous of extending the supremacy of England, because it was a government outside of themselves; they now applied that jealousy to one another, forgetting that the general power would be in their own hands."

Still there were many very pleasant and very noble manifestations of sympathy and brotherhood between the colonies. The bells tolled in Virginia for the sorrows of Massachusetts, and the injuries specially directed against her were scheduled as common injuries. But, when the articles of a permanent union came to be settled, jealousy and selfishness again asserted their malign presence and influence, and well-nigh made vain the work of Washington and the continental congress and army.

The dean of Gloucester wrote: "As to the future grandeur of America and its being a rising empire, under one head, whether republican or monarchical, it is one of the idlest and most visionary notions that was ever conceived even by writers of romance. The mutual antipathies and clashing interests of the Americans; their difference of governments, habitudes and manners, indicate that they

will have no common center of union and no common interest. They never can be united into one compact empire under any species of government whatever; a disunited people until the end of time, suspicious and distrustful of each other, they will be divided and subdivided into little commonwealths or principalities, according to natural boundaries, by great bays of the sea, and by vast rivers, lakes and ridges of mountains."

The long delay which preceded the adoption of the articles of confederation indicates that from a domestic point of view the urgency was not felt by the colonies. The revolutionary government, represented by congress, was in the exercise of perhaps even larger powers than those proposed to be conferred upon it by the articles of confederation. A revolutionary government, being one of necessity, is not restrained in its powers, otherwise than by the will of those who have instituted it. It probably seemed to many that the questions involved in a peace settlement and perfect union might well abide the issue of the war; and it seems to be quite probable, but for the necessity which became more and more apparent and more and more urgent, of presenting to the outside world an organized national government, that the adoption of the articles of confederation might have been yet further postponed. The congress had very early sent its diplomatic representatives to the continent; and

they had opened negotiations which had made more or less progress with France, Holland, and Spain, involving loans of money and schemes of commercial treaties, which should recompense the risks which the friendliness of these governments toward the colonies involved. Large loans had been secured upon the pledge of a national credit. These pledges ran for their redemption into peace times. They were in fact, if not in form, conditioned upon the independence of the united colonies as a nation. The confidence of our foreign friends was being shaken by the delay in the adoption of a plan of government, and by the manifestations of jealous unfriendliness between the colonies. Their demand that the colonies should subscribe and publish a plan of government was imperious. The efforts of England to treat separately with the states greatly alarmed our friends. These overtures, to be sure, had in every instance been scornfully rejected; Governor Trumbull, of Connecticut, saying that such proposals should be addressed to the supreme authority, the congress of the United States.

Lord North had taken notice in parliament of the failure to ratify the articles of confederation, and had based upon this fact conclusions unfavorable to the American cause. The adhesion of Maryland to the confederation was largely based upon such considerations as these. It was expressly recited that she was induced to forego her objec-

tions because "the enemies of the country took advantage of the circumstance to disseminate opinions of an ultimate dissolution of the union."

The address of congress accompanying the articles of confederation, contained this suggestion: "More than any other consideration, it will confound our foreign enemies * * * and add weight and respect to our councils at home and to our treaties abroad."

But, after all, and notwithstanding the government now organized under the articles of confederation was called "a perpetual union", it was in fact little more than an emergency government, deriving all of its practical force from the pressure of a common danger, from external rather than internal forces. Its efficiency diminished in the ratio of the success of the continental arms, and disappeared altogether with the treaty of peace. It sufficed only so long as an urgent self-interest supported the recommendation of congress, so long as the conflicts of small interests were held in abeyance by the supreme present demands of a larger common interest.

As I have already said, the articles rather limited than enlarged the powers of congress. Mr. Winsor, in his article upon the confederation, says: "The fact was that congress, before 1781, with no defined powers, stretching what it had as it could,

was stronger than it became when those powers were defined under the confederation."

The inadequacy of the plan of confederation had been demonstrated in the long interval between its adoption by congress and its ratification by the colonies. "A government by supplication," as Randolph afterwards described it, whether administered under a written constitution, or under a revolutionary organization, was in everything shamefully inadequate for all national purposes.

The two subjects that presented the chief elements of difference in the debate in congress on the articles of confederation, were the basis of representation in congress, and the question of state boundaries, involving the question of the ownership of the vast western domain over which an ignorant geography had stretched the boundaries of some of the early colonies. It is not my purpose here even to outline the debate upon these questions.

The articles do not, either in form or substance, attract our admiration. The defects were so glaring and radical that Hamilton's characterization of it as a "senseless and futile confederation" was hardly too severe. The instrument opens by providing a severe rule of interpretation: "Each state retains * * * every power, jurisdiction and right which is not, by this confederation, expressly delegated to the United States in congress assembled." No room

was to be left for the assumption of implied powers; jealous strictness, rather than a beneficial construction, was to be the rule. All the powers granted by the articles were lodged in the congress. The statesmen who framed this plan of government were not unfamiliar with the threefold division of the powers of government. Such of the states as had already framed their constitutions had adopted this plan; and it had been in use almost from the beginning in the colonies. A governor or chief executive, with a legislature consisting generally of two branches or houses, and a judiciary distinct from both, was a familiar organization; yet in the articles of confederation, no provision was made for a separate executive; and the exceptional form of a legislature consisting of a single branch was adopted. Only the feeblest and most limited judicial powers were given to the union. Congress was authorized to appoint courts "for the trial of piracies and felonies committed on the high seas," and courts for "receiving and determining finally appeals in all cases of capture." The congress itself was made "the last resort on appeal" in all disputes between the states, "concerning boundary, jurisdiction, or any other cause whatever." An executive department was apparently so impossible as not to have been seriously thought of. A president from any state would, it was thought, unduly magnify the power and importance of that state; and was

wholly inadmissible. Every state must participate on a basis of absolute equality in every act of government. Not only was the congress so organized; but the "committee of the states" which was to sit in the recess of congress was made to consist of one from each state. The special committees appointed by congress generally took the same organization. The delegates were to be paid by their respective states; and so fearful were the states that their delegates might, from long service, become unduly attached to the union, that it was provided that the term should be one year, and that no person should serve as a delegate "for more than three years in any term of six years." And further to limit the independent action of the delegates the power of the states to recall them at any time and to send others in their stead was reserved. The early state constitutions contained similar limitations, as to the delegates in congress; and the same spirit appears in the provision that the president of congress should not serve as such for more than one year in any term of three years. The administrative functions of government were at first discharged directly by congress. Contracts large and small were negotiated and voted in the full body. Let us take a sample day from the Journal: (Nov. 6, 1775.)

"The committee on claims reported that there is due:

"To John Forbes, for goods and necessaries delivered to several rifle companies, the sum of 35 11 10, equal to 94.9 dollars, of which sum Capt. Cluggage ought to be charged with 6 2 10, and Captain Chambers with 4 10, the remainder to the continent; that this is to be paid per order to Blair M'Clenachan.

"To Jane Allen, the sum of 47 0 7, and the Vendal Lands the sum of 2 0 0, both sums being 130.7 dollars, and that the same be paid, per order, to Henry Wisner, Esq., and be charged to the continent.

"To Judah Harbow 7 12 4, and to Captain Jackson 13 4 6, for necessaries furnished several rifle companies, and that both sums be paid, per order, to Henry Wisner, Esq., and charged to the continent, being 52.1 dollars.

"To Andrew Graff, for wagonage, the sum of 27 2 6, and to Christopher Crawford, for blankets, the sum of 6 15, both which sums to be paid, per order, to George Graff, and charged to the continent, being 90.3 dollars.

"To Richard Backhouse, for wagonage, the sum of 51, being 136 dollars.

"To Miles and Wister, by sundry certificates, 26 6 4, equal to 70.1 dollars, of which 13 10 be charged to Captain Rice's company, and 3s to Captain Cressop's company; the remainder to the continent.

"To Frederick Leinbach, by sundry certificates,

58 11 5, equal to 156.2 dollars; of which 4 13 6 to be charged to Captain Price, 3 15 to Captain Stevenson, 6 15 1 to commissary Biddle, until it appears to be otherwise accounted for, and the remainder to the continent, to be paid, per order, to George Schlosser.

"To John Murrow, for goods delivered to Captain Stevenson, 71 18 10, to be paid, per order, to George Davis, and charged to said Stevenson, being 191.8 dollars.

"To Robert Erwin, for wagonage, 169 9 3, equal to 451.9 dollars.

"To Timothy Matlack, money by him paid to Joseph Brown, an express to Cambridge, 17 4 1, equal to 45.9 dollars.

"To Jasper Stimes and Abraham Storm, for provisions and carriage furnished by them to the rifle companies 14 9 2, New York currency, 36.1 dollars, to be paid, per order, to John Alsqo, Esq.

"Ordered that the above sums be paid."

Soon, however, boards composed of members of congress were instituted; but their powers were not well defined, and the supervision of congress was constant and particular. A little later a board of war, composed of five members, not members of congress, was established. A committee of claims, one from each colony, developed into a crude treasury department; and other executive functions were similarly administered. But the

lack of a constitutional executive department, with defined but independent powers, placed a heavy and well-nigh fatal weight upon the energies of the union. The powers of congress, under the articles of confederation, were these: The exclusive right of determining on peace and war, save when a state was invaded or about to be invaded; of receiving and sending ambassadors, and entering into treaties; of deciding questions of capture and prize; of granting letters of marque and reprisal, "in times of peace;" the states being authorized to issue such letters after a declaration of war by the United States; of appointing courts for trial of offenses on the seas, and of appeals in prize cases; to be the tribunal of last resort in controversies between states; to regulate the value and alloy of coin, whether struck by the United States or the states; of fixing the standard of weights and measures; regulating the trade and managing all affairs with the Indians, "not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated;" of establishing and regulating postoffices and post routes; of appointing all officers of the land forces, except regimental officers, all officers of the naval forces, and of making regulations for the army and navy; to appoint a committee to sit in the recess of congress, and such civil officers as might be necessary; to ascertain and apportion the moneys needed,

and to appropriate the same; to borrow money or emit bills on the credit of the United States; to build a navy; to fix the land forces and make requisition for state quotas.

There were some important express limitations, however, placed upon these general powers. The power to negotiate commercial treaties was so limited that except as to "treaties already proposed by congress, to the courts of France and Spain," the power of each state to levy imposts and duties upon foreign merchandise or to prohibit the importation or exportation of any merchandise at its pleasure was not restrained, save by the provision that these duties should be equal as between foreigners and its own citizens. Nearly all of the important powers given were further limited to be exercised only by vote of nine states; and over all was the practical and destructive, though unexpressed limitation, that no act of congress, even within the powers most clearly conferred could be executed in any state until the state legislature had added its sanction. There can be no government in any just sense without a body of citizens upon which it can directly act—citizens who owe to it a primary allegiance and upon whose persons and estates it may lay its restraints and its exactions. Under the confederation congress had no power to draft a single man for military service, nor to lay and collect a single dollar of taxes, direct or

indirect. It is true that the congressional resolves might have been mandatory in their form; "required" might have been substituted for "requested;" for the articles bound the states to furnish quotas of men, and allotments of money as apportioned by congress. Article XIII was as follows: "Every state shall abide by the determinations of the United States in congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the United States, and be afterward confirmed by the legislature of every state."

But, as the use of an armed force against a delinquent state was the only method of enforcing a requisition, congress wisely used the politer term "request." Notwithstanding this clear provision in the articles,, binding the states to comply with the resolves of congress, instances were not infrequent where a state, not by inaction only, but by affirmative action and explicit declaration, refused to abide by the determination of congress, on questions clearly by the articles submitted to it.

In December, 1779, the legislature of Virginia passed a resolution declaring "that the legislature of this commonwealth are greatly alarmed at the

assumption of power lately exercised by congress. While the right of recommending measures to each state by congress is admitted, we contend for that of judging of their utility and expediency, and, of course, either to approve or reject. Making any state answerable for not agreeing to any of its recommendations would establish a dangerous precedent against the authority of the legislature and the sovereignty of the separate states."

And in the matter of appeals in prize cases New Hampshire attempted by law to cut off the appeal expressly provided for in the articles of confederation.

We have had a good deal of modern talk about the power of the nation to "coerce a state;" but the thought is not only inaccurate but obsolete. Under the confederation such a question might—indeed, did arise; but under the national constitution we lay exactions and visit penalties upon citizens of the United States. No commission under a state seal; no resolve of a state legislature, can stand between the national authority and the citizen who resists it. No power was given to congress by the articles of confederation to regulate commerce. Each state made its own tariff and took the receipts from customs into its own treasury. As a source of revenue this power was essential to the union; but it was much more than a revenue question. It was the *sine qua non* of an enduring union. We who have so

much division over one tariff can appreciate the indescribable confusion and disaster resulting from thirteen customs schedules. Until there was unity here there could be none elsewhere. The competitions between the ports of different states begat new and revived old jealousies and animosities, and confused traders by their intricacies and frequent changes. We could have no standing among commercial nations until the power to regulate commerce, by granting favors or imposing exactions, and instituting a uniform schedule of duties was conferred. Our commerce was destroyed during the revolutionary war; and yet the absence of power in congress to regulate this subject left the enemy that had wrought its destruction at liberty to shut out our ships from the trade of the West India colonies, without fear of the retaliatory restrictions which her conduct suggested and demanded.

Story says: "While, for instance, British ships with their commodities had every admission into our ports, American ships and exports were loaded with heavy exactions or prohibited from entry into British ports. We were, therefore, the victims of our own imbecility, and reduced to a complete subjection to the commercial regulations of other countries, notwithstanding our boasts of freedom and independence."

John Adams, writing from France in May, 1785,

to Secretary Jay, gives a graphic description of the embarrassments and humiliation which our foreign representatives suffered. He says:

"But you will see, by a letter from the Duke of Dorset, which your ministers here some time since transmitted, that the British cabinet have conceived doubts, whether congress have power to treat of commercial matters, and whether our states should not separately grant their full powers to a minister. I think it may be taken for granted, that the states will never think of sending separate ambassadors, or of authorizing directly those appointed by congress. The idea of thirteen plenipotentiaries meeting together in a congress at every court in Europe, each with a full power and distinct instructions from his state, presents to view such a picture of confusion, altercation, expense, and endless delay, as must convince every man of its impracticability. Neither is there less absurdity in supposing that all the states should unite in the separate election of the same man, since there is not, never was and never will be a citizen whom each state would separately prefer for conducting the negotiation. It is equally inconceivable that each state should separately send a full power and separate instructions to the ministers appointed by congress. What a heterogeneous mass of papers, full of different objects, various views, and inconsistent and contradictory orders, must such a man pull out of his

portfolio, from time to time, to regulate his judgment and his conduct! He must be accountable, too, to thirteen different tribunals for his conduct; a situation in which no man would ever consent to stand, if it is possible, which I do not believe, that any state should ever wish for such a system. I suppose too that the confederation has already settled all these points, and that congress alone have authority to treat with foreign powers, and to appoint ambassadors and foreign ministers, and that the states have separately no power to do either. Yet it is plain from the Duke of Dorset's letter, that the British cabinet have conceived a different opinion. This is to be accounted for, only by conjecturing that they have put an erroneous construction on the *limitation, restriction,* or *exception* in the article of our confederation, which gives to congress the power of appointing ambassadors and making treaties. This limitation is confined to treaties of commerce; all others congress have full power to make. From this limitation, however, will probably arise a great deal of difficulty and delay to me. If the British ministry wish and seek for delays this will be their pretext. But, even if they should wish for despatch, which is not likely, they may have propositions to make which will fall within the limitation; and, in such cases, it will not be in my power to agree with them. I can only transmit the propositions to congress, who will perhaps trans-

mit them to the states; and no man can foresee when the answers will be received so that the business can be brought to a conclusion.

"It is very possible that the cabinet of St. James may decline even entering into any conference at all upon the subject of a treaty of commerce, until the powers of congress are enlarged."

And Washington wrote of this matter as follows: "America must appear in a very contemptible point of view to those with whom she was endeavoring to form commercial treaties without possessing the means of carrying them into effect. They must see and feel that the union, or the states individually, are sovereign as best suits their purposes. In a word, that we are a nation to-day and thirteen to-morrow. Who will treat with us on such terms?"

The English statesmen saw our fatal inability. Lord Sheffield said: "There should be no treaty with the American states because they will not place England on a better footing than France and Holland, and equal rights will be enjoyed, of course, without a treaty. * * * It will not be an easy matter to bring the American states to act as a nation; they are not to be feared as such by us. The confederation does not enable congress to form more than general treaties; when treaties become necessary, they must be made with the states separately. Each state has reserved every power relative to im-

posts, prohibitions, duties, etc., to itself. If the American states choose to send consuls, receive them and send a consul to each state. Each state will soon enter into all necessary regulations with the consul, and this is the whole that is necessary."

So apparent was the necessity of a single control of these matters that the congress had, as we have seen in the resolves of 1774, declared that "from the necessity of the case" they cheerfully consented to the regulation by parliament of their "external commerce." But when the confederacy was formed this necessary power was withheld from a congress composed of delegates from each state and in which each state had an equal voice. The representation of New Jersey to the congress, in June, 1777, of the objections of that colony to the articles of confederation, contained this paragraph, which is an early and forcible presentation of this matter: "By the sixth and ninth articles, the regulation of trade seems to be committed to the several states within their separate jurisdiction, in such a degree as may involve many difficulties and embarrassments, and be attended with injustice to some states in the union. We are of opinion that the sole and exclusive power of regulating the trade of the United States with foreign nations ought to be clearly vested in the congress, and that the revenue arising from all duties and customs imposed thereon ought to be appropriated to the building, equipping and manning

a navy, for the protection of the trade and defense of the coasts, and to such other public and general purposes as to the congress shall seem proper, and for the common benefit of the states."

This suggestion was rejected, but the "necessity of the case" remained, and its voice became more imperious as the years went on, until it was recognized and fully provided for in Article I, section 8, of the constitution. The obstinacy with which some of the states held on to the power over commerce, of which they could make no really beneficial use, even in the most selfish sense, is inexplicable to us who have seen the happy influence of a national use of that power. Strenuous efforts were made, before and after the adoption of the articles of confederation, to get the consent of the states to the levying of an impost duty by congress. In February, 1781, congress asked the states for power to lay a duty upon imposts to pay the public debt and to continue only until it should be paid. Rhode Island selfishly blocked the way, though the cause of independence was *in extremis* from a lack of revenue. The reasons given were that the impost would bear unduly upon the commercial states; that officers unknown to the constitution would be introduced; and that a revenue not directly derived from a grant of the states would render congress independent and be dangerous to the liberties of the United States. While congress, by a committee, was trying to re-

move these unpatriotic objections, Virginia—which had assented—under the leadership of Richard Henry Lee, withdrew its assent, placing this action upon the declaration that such a tax would be injurious to its sovereignty and might prove destructive of the rights and liberties of the people. Only the compelling and scourging intervention of providence opened the way to union and safety, and brought to naught these freaks of pride and selfishness.

In April, 1783, congress asked the states for authority, for a period of twenty-five years, to lay certain duties on specific articles, and a general duty of five per cent. ad valorem on all others. The emergency was stated by congress in the following terms: "It has become the duty of congress to declare most explicitly that the crisis has arrived when the people of these United States, by whose will and for whose benefit the federal government was instituted, must decide whether they will support their rank as a nation by maintaining the public faith at home or abroad; or whether, for want of a timely exertion in establishing a general revenue, and thereby giving strength to the confederacy, they will hazard not only the existence of the union, but of those great and invaluable privileges for which they have so arduously and so honorably contended."

In 1784 congress requested the states to vest the

general government with power, for fifteen years, to prescribe some general regulations of commerce, not involving revenue, but intended solely to give effect to our commercial treaties and to protect our people against the hostile provisions of the navigation acts of Great Britain.

Neither of these requests was granted. The appeal of 1783 was defeated by the refusal of New York to concur with the other states. That of 1784 had no response.

The inadequacy of the confederation, and the refusal of the states to grant powers that would have given some force and dignity to the national government, drove out of congress many of the ablest public men. The members could not but feel as a personal humiliation the powerlessness of the body to respond to the urgent and even pathetic appeals of the national creditors. Washington, in one of his letters, notices the absence of these men from the national councils; but it was quite natural that they should prefer to serve in the assemblies of their own states and to participate in decrees that could be put into execution. It is said that, at no time between October, 1783, and June, 1784, were nine states present by their representatives in congress. Nothing could more strongly emphasize the decay of the confederacy. Mr. Winsor says: "Congress had not the inherent dignity to allure statesmen, nor did it offer temptations even to politicians."

The appeals of congress and of Washington, of the impoverished veterans, driven almost to frenzy by want; of the friendly states of France and Holland, that had so generously supplied our need by loans were all unavailing. The refusal of New York to accede to the measures proposed for a national revenue, it has been said, virtually decreed the dissolution of the existing government. The states had now finally not only refused to give to congress a general power to regulate commerce, but even to concede the power when limited to a term of years and to particular subjects.

The story of the discreditable and cruel treatment of our creditors, home and foreign, and especially of the veterans of the war, can not be read without shame; but perhaps it was well that the articles of confederation were not patched up, and that humiliation, disaster and decay should go on until the people were driven to the adoption of an adequate plan of government.

The want of any power in congress to regulate commerce between the states was not so disastrously and immediately felt, because it did not have any relation to revenue; but this subject, like that of foreign commerce, was left by the articles of confederation, in the anomalous condition that there was no power of regulation anywhere. The states were forbidden to make treaties with each other, and congress was given no power to legislate on

the subject. Some questions of internal commerce presented themselves and added to the general confusion and distress.

The articles contain some general provisions that are worthy of note. The free inhabitants of each state were secured in all the privileges and immunities of free citizens in the several states; and in free ingress and regress and all the privileges of trade and commerce, subject to the same duties and restrictions as the inhabitants of the particular state. The reclamation of fugitives from justice was provided for. Full faith and credit were to be given in each of the states to the records, acts and judicial proceedings of the courts and magistrates of every other state. The subordination of the several states was established by the provision that no state, without the consent of the United States, should send an embassy to, or enter into any conference, or alliance, or treaty, with any foreign nation; nor should any two states enter into any such treaty or alliance between themselves; nor engage in any war; nor maintain any ships of war, or armed forces in time of peace, except as authorized by congress.

In view of these limitations, it was wholly incongruous to describe the states as sovereign, either in their relations to each other or to the nations of the world.

It is an interesting fact that article 11 provided

for the admission of Canada to the union. It was as follows: "Article XI. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine states."

As a frame of government for peace, the absence of any adequate provision for a federal judiciary was another glaring defect in the articles of confederation. The power to judge, interpret and enforce the constitution, treaties and laws made by the national government, is essential to the very existence of the government.

Judge Story thus summarizes the defects of the confederation: "But they [the congress] possessed not the power to raise any revenue, to levy any tax, to enforce any law, to secure any rights, to regulate any trade, or even the poor prerogative of commanding means to pay their own ministers at a foreign court. They could contract debts, but they were without means to discharge them. They could pledge the public faith, but they were incapable of redeeming it. They could enter into treaties; but every state in the union might dispute them with impunity. They could contract alliances, but could not command men or money to give them vigor. They could institute courts for piracies and felonies on the high seas; but they had no means

to pay either the judges or the jurors. In short, all powers which did not execute themselves were at the mercy of the states, and might be trampled upon at will with impunity."

These defects, as I have said, had been disclosed before Maryland ratified the confederation; and we wonder why the accession of that state should have produced so much rejoicing in the army and throughout the colonies; but our glance is a backward one. We contrast the articles of confederation with the perfected constitution—the tree with the germ—and we rightly give the tree the glory; but wrongly despise the germ. The masses are not much taught by philosophy; it does not reach them; experience is their faithful teacher. The national constitution, like the constitutions of the states, could only come by development. It was not, as a whole, in the brain of the wisest of our statesmen. Jefferson, Hamilton, Franklin, Adams, either would have made bad work of the business if it had been left to either. They were wise to contribute, but not wise enough to complete.

The chief use and glory of the articles of confederation were that, by and through them, "a perpetual union" was declared and subscribed by each of the thirteen colonies; and that the use of the scheme of government provided, by disclosing its fatal defects, infallibly pointed out the essentials of a perfect union. They organized a general representa-

tive government—a shadowy outline; but an outline that, when these suggestions were defined and rounded, should be the most free and perfect system of government that men have ever enjoyed.

Bancroft says of it: "A better one could not then have been accepted; but, with all its faults, it contained the elements for the evolution of a more perfect union."

# THE INSTITUTION OF STATE GOVERNMENTS

## SIXTH LECTURE

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The institution of state governments was a most important and necessary step in the development of the republic. The king had denounced the penalties of treason against the colonists; his armies and fleets had inaugurated war; and the old forms of oath and writ had become incongruous. Independence had not yet been declared, but local affairs were in disorder. The assemblies had been prorogued, and the royal governors had abandoned their duties, or sought to exercise them from garrisoned towns or from the decks of royal cruisers. Committees of safety and defense had by popular acquiescence assumed some measure of public direction and control; but the necessity for a more formal organization of the powers of government was pressing hard upon many of the colonies, especially upon Massachusetts. It was, however, well under-

stood by the people of Massachusetts that this forward step to which their necessities so strongly pressed them was only to be ventured in unison with the other colonies.

On June 2, 1775, John Hancock, the president, laid before the congress a letter from the provincial convention of Massachusetts, dated May 16. This letter set forth the difficulties they suffered for want of a regular form of government, and requested "explicit advice respecting the taking up and exercising the powers of civil government," and declaring their readiness to "submit to such a general plan as the congress may direct for the colonies."

In response to this communication, the congress resolved, on the ninth of June, as follows:

"That no obedience being due to the act of parliament for altering the charter of the colony of Massachusetts Bay, nor to a governor, or a lieutenant-governor, who will not observe the directions of, but endeavor to subvert that charter, the governor and lieutenant-governor of that colony are to be considered as absent, and their offices vacant; and as there is no council there, and the inconveniences, arising from the suspension of the powers of government, are intolerable, especially at a time when General Gage hath actually levied war, and is carrying on hostilities, against his majesty's peaceable and loyal subjects of that colony; that, in order to conform, as near as may be, to the spirit

and substance of the charter, it be recommended to the provincial convention, to write letters to the inhabitants of the several places, which are entitled to representation in assembly, requesting them to choose such representatives, and that the assembly, when chosen, do elect councilors, and that such assembly, or council, exercise the powers of government, until a governor, of his majesty's appointment, will consent to govern the colony according to its charter."

This advice was closely followed by Massachusetts, and the action taken was declared to be "in observance of the resolve of the continental congress." The action was provisional—the government was an *ad interim* one, and it followed as far as might be the lines of the charter. But even this tentative step was not taken by Massachusetts without the direction of the general government.

Again, on October 6, the committee of correspondence of Massachusetts addressed congress and, after stating the condition of the colony—that the governor had by proclamation prevented the meeting of the general court, and that all laws were, therefore suspended—solicited the advice of congress in the premises.

New Hampshire, following the course adopted by Massachusetts, also applied to congress for advice and direction as to the organization of a local government; and with deferential patience awaited

the delayed answer. On October 18, 1775, her delegates laid before congress the following from their instructions: "We would have you immediately use your utmost endeavors to obtain the advice and direction of the congress, with respect to a method for our administering justice, and regulating our civil police. We press you not to delay this matter, as, its being done speedily, will probably prevent the greatest confusion among us." On November 3, congress recommended that New Hampshire "call a full and free representation of the people, and that the representatives, if they think it necessary, establish such a form of government as, in their judgment, will best produce the happiness of the people, and most effectually secure peace and good order in the province, during the continuance of the present dispute between Great Britain and the colonies."

On November 4, 1775, South Carolina received similar advice, a provision being added for an army to defend the colony at "the continental expense."

On December 4, 1775, in response to a communication from Virginia, the congress resolved "that if the convention of Virginia shall find it necessary to establish a form of government in that colony, it be recommended to that convention to call a full and free representation of the people, and that the said representatives, if they think it necessary, establish such form of government as in their

judgment will best produce the happiness of the people, and most effectually secure peace and good order in the colony, during the continuance of the present dispute between Great Britain and the colonies."

On the tenth of May, 1776, congress determined to deal generally with the question of instituting state governments in the colonies, and accordingly resolved: "That it be recommended to the respective assemblies and conventions of the united colonies, where no government sufficient to the exigencies of their affairs hath been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people best conduce to the happiness and safety of their constituents in particular and America in general." On the 15th of May a preamble to this resolution was reported and adopted; and the resolution is usually referred to that date.

Of this resolution, John Adams, who drafted it, says: "It was, indeed, on all hands, considered by men of understanding as equivalent to a declaration of independence."

As the war progressed and fresh outrages aroused the people, opposition to measures like the resolution of May 15 was over-borne in all the colonies by popular uprisings, and the delegates to congress were freshly empowered and strengthened. The expressions from the several colonies favoring

independence and a confederation usually had a limitation like this, in the case of Rhode Island: "Taking the greatest care to secure to this colony, in the strongest and most perfect manner, its present established form, and all the powers of government, in so far as it relates to its internal police and the conduct of its own affairs, civil and religious." Or, as the Virginia convention expressed it: To form a confederation "provided that the power of forming government for and the regulations of the internal concerns of each colony be left to the colonial legislatures."

The state constitutions, adopted before the confederation (November, 1777), assumed a permanent union, and made provision for local and domestic affairs only. In the Connecticut act of 1776, continuing the charter of 1662 in force, there is this explicit recognition of an existing general government.

"3. That all the free inhabitants of this or any other of the United States of America * * * shall enjoy the same justice and law within this state," etc.

The first constitution of Delaware was instituted under the resolution of May 15 and went into effect September 21, 1776. It provided for the annual election of delegates to "the congress of the United States of America"—thus assuming the fact of a union,—and that its life was to be concurrent

with that of the state. The superior authority of the acts of congress in matters within its sphere was declared in the twenty-fourth article, as follows:

"Art. 24. All acts of assembly in force in the state on the fifteenth of May last (and not hereby altered *or contrary to the resolutions of congress* * * * ) shall continue."

The preamble of the constitution of Georgia, adopted February, 1777, recited the resolution of congress of May 15 and the fact that "the independence of the United States of America" has been declared as the base from which it sprang; and provided for an appeal in admiralty cases to the "continental congress," and for the annual election of "continental delegates."

The first constitution of Maryland went into force in November, 1776. The declaration of rights, which accompanied it, recited the declaration of independence, and declared that "the people of this state ought to have the sole and exclusive right of regulating the *internal* government and police thereof," and prohibited public officers from receiving any present from any foreign prince or state, or from the United States. The control of general or external affairs by congress was assumed as the existing status. It further provided for the annual choice of delegates to congress, prescribed the qualifications of such delegates and provided that no delegate should serve for more than three in any

term of six years, nor hold any office of profit "in the gift of congress."

The general court of Massachusetts adopted a constitution in 1778, but on submission to the people it was rejected; and it was not until 1780 that the first constitution of the state went into operation.

The first constitution of New Hampshire, which was completed January 5, 1776, before the declaration of independence, opened with this recital: "We, the members of the congress of New Hampshire, chosen and appointed by the free suffrages of the people of the said colony, and authorized and empowered by them to meet together, and use such means and pursue such measures as we should judge best for the public good; and in particular to establish some form of government, *provided that measure should be recommended by the continental congress; and a recommendation having been transmitted to us from the said congress,*" do, etc. It was further resolved, "That, if the present unhappy dispute with Great Britain shall continue longer than this present year, and the continental congress give no *instruction or direction to the contrary,*" that a council be chosen by the people, etc.

The constitution of New Jersey, adopted in 1776 by a convention assembled in May of that year, contains this recital in the preamble: "As the hon-

orable the continental congress, the *supreme* council of the American colonies has advised such of the colonies as have not yet gone into measures, to adopt for themselves, respectively, such government as shall best conduce to their own happiness and safety, and the well being of America in general: We, the representatives," etc.

The convention which framed the first constitution of New York, assembled at White Plains, July 10, 1776, and the instrument was completed at Kingston, April 20, 1777. The preamble recites the resolution of congress of May 15, advising the institution of state governments. The declaration of independence is then recited at length and is followed by this: "In virtue of which several acts, declarations, and proceedings mentioned and contained in the aforecited resolves or resolutions of the general congress of the United American States and of the congresses or conventions of this state, all power whatever therein hath reverted to the people thereof."

The first constitutional convention of the state of North Carolina assembled at Halifax in November, 1776, and completed its work in the following month. The second paragraph of the declaration of rights is as follows: "That the people of this state ought to have the sole and exclusive right of regulating the *internal government and police thereof.*" The constitution contained the provision "that

no officer in the regular army or navy, in the service and pay of the United States," should have a seat in the assembly; and provided for the annual election of delegates to the continental congress.

The first constitution of Pennsylvania was framed by a convention which assembled at Philadelphia on the fifteenth of July, 1776, and completed its labors in September of the same year. The preamble declares: "Whereas, it is absolutely necessary for the welfare and safety of the inhabitants of said colonies, that they be henceforth free and independent states, and that just, permanent, and proper forms of government exist in every part of them, derived from and founded on the authority of the people only, agreeable to the directions of the honorable American congress." The third article of the declaration of rights was as follows: "That the people of this state have the sole, exclusive and inherent right of governing and regulating the *internal police of the same.*"

In South Carolina a provincial congress adopted, in March, 1776, a form of government. It provided for delegates to the continental congress and declared "that the *resolutions of the continental congress, now of force in this colony, shall so continue until altered or revoked by them.*" This constitution and the one adopted by the general assembly in 1778 were declared by the supreme court to be simple acts of the general assembly and subject to re-

peal by that body. The constitution of 1778 referred to the former as temporary only and recited: "Whereas, the united colonies of America have been since constituted independent states, and the political connection heretofore subsisting between them and Great Britain entirely dissolved by the declaration of the honorable continental congress;" and provided for the annual election of "delegates to the congress of the United States."

It appears, I think, from what I have said: First, that the state governments were not distinct and separate ventures, antedating the union, but were incident to and grew out of the union; and, second, that the sovereignty assumed in these first state constitutions was of local, or internal affairs, while the larger sovereignty, that had to do with the world, was either expressly or impliedly left to the union—as represented by the continental congress. There was nothing in any of these constitutions—save that of South Carolina—that looked to or provided for any intercourse between the state and any foreign power.

It will be instructive to examine with some detail these first state constitutions, for in them we have the first systematic expressions of the American form of government. Most of them were introduced by bills of rights, and these, upon examination, will be found to be largely re-statements of the natural and inherited rights that had been so

often and so fervently defended in the addresses to the crown. Seeing that the powers of government had been so cruelly and selfishly used by kings and parliaments and royal governors we do not wonder that there should have been a popular affection for bills of rights and a most watchful care that the powers of public officers should be strictly defined and limited. The objection to the national constitution of 1787 that it did not contain a bill of rights was well-nigh fatal to its adoption, and was only waived in the belief that it would be—as it was—speedily removed by amendments.

The bill of rights of Maryland, adopted November 11, 1776, may be taken as a good general example. It declared that the people were the source of all government and that the object of government was the general good; that public officers were "the trustees of the public"; that the legislative, executive and judicial functions should be kept forever separate; that justice should be administered freely, without sale, denial or delay; that trials should be by a jury of the neighborhood; that freedom of speech and of the press should be held inviolate; the right of the people to assemble peaceably and to petition for a redress of grievances was affirmed; cruel and unusual punishments were forbidden; the accused was guaranteed the right to a speedy trial, to confront witnesses, to be defended by counsel; excessive bail was forbidden; *ex post*

*facto* laws were prohibited; the right of search limited; the right to bear arms and the freedom of worship affirmed, and test oaths and titles of nobility prohibited.

It was a noble summary of human rights, an enduring basis for free government. The individual rights asserted were, in the main, the rights which Englishmen had achieved and the colonists had inherited. The division of governmental powers was a modification of the forms of the English constitution. The king was eliminated. The dread and redoubtable sovereign, by the grace of God, king, etc., was no longer a man, but the law; and that law the expression of the will of the people.

The constitutions of Delaware, Maryland, Massachusetts, New Hampshire, Rhode Island, Connecticut, New Jersey, New York, North Carolina, Georgia and Virginia provided for the organization of a legislature to consist of two distinct and co-ordinate branches.

In Delaware, Maryland, Massachusetts, Rhode Island, Connecticut, New Jersey, New York, North Carolina and Virginia, the members of both branches of the legislature were chosen by popular vote.

In Georgia the legislative body, chosen annually by the freemen, on the first day of their meeting elected an executive council from their own body. The remainder of the body constituted the house of assembly and had full legislative power; but all

laws were required to be sent to the executive council for their perusal and advice.

In New Hampshire the assembly, or house of representatives, chose a council which, when chosen, was charged jointly with the assembly with legislative powers. In the constitution of 1784 a senate and house of representatives were provided for, vested with supreme legislative power, and the members of both houses were to be chosen by popular election.

In Pennsylvania, by the constitution of 1776, the supreme legislative power was vested in a single house of representatives chosen by the freemen of the commonwealth. A council was also provided for to be chosen by popular vote; but it was charged with executive rather than legislative duties.

In South Carolina, under the constitution of 1776, a general assembly was elected by the freeholders, and this assembly chose from its own body a legislative council, and the two bodies chose a president and vice-president. The supreme legislative power was vested in the president, the legislative council and the assembly.

The constitution adopted by the convention of Vermont in 1777 provided for a single legislative body or assembly, but all bills were required to be laid before the governor and council for perusal and proposals for amendment; and, except in case of

sudden necessity, were to lie over until the next assembly for final passage.

In Connecticut and Rhode Island, under their charters, which were continued, the legislative powers were vested in a council and delegates which at first met in one body, but had afterwards come to sit separately. The members of both branches were elected by popular vote.

It thus appears that in eleven of the states the bicameral form had been adopted for the supreme legislature.

George Mason, writing in 1778, said of the organization of the state governments: "There is a remarkable sameness in all the forms of government throughout the American union, except in the states of South Carolina and Pennsylvania, the first having three branches of legislature, and the last only one; all the other states have two: This difference having given general disgust, and it is probable an alteration will take place to assimilate these to the constitutions of the other states."

The idea of giving greater permanence to the upper branch of the legislature appears in many of these constitutions. In Delaware one of the three councilors chosen for each county retired every year and the vacancy was filled by a new election.

Under the first constitution of Maryland the term of office of the senators was five years, while that

of the members of the assembly was one year. Two persons were chosen by popular vote from each county to be "electors of the senate," and these electors chose the senators. The electors of senators were required to take an oath "to elect without favor, affection, partiality, or prejudice, such persons for senators as they, in their judgment and conscience, believe best qualified for the office."

In New York the senators first chosen were divided by lot into four classes, the term of one class expiring each year; thus, after the first election, making the term of office four years, while the members of the assembly were chosen for one year only.

In Virginia the senate was divided into four classes of six members each, and one class chosen annually.

The reservation, suggested by the English constitution, of the power of originating revenue bills to the lower and more popular branch of the legislature appears in several of these early constitutions.

In Delaware it was declared "that all money bills for the support of government shall originate in the house of assembly, and may be altered, amended or rejected by the legislative council. All other bills and ordinances may take rise in the house of assembly or legislative council, and may be altered, amended or rejected by either."

The constitution of Maryland contained a similar provision. But a wise provision, which ought to have been embodied in the national constitution, preserved the legislative liberty of the senate. It was expressed thus: "That the senate may be at full and perfect liberty to exercise their judgment in passing laws—and that they may not be compelled by the house of delegates, either to reject a money bill, which the emergency of affairs may require, or to assent to some other act of legislation, in their conscience and judgment injurious to the public welfare—the house of delegates shall not, on any occasion, or under any pretense, annex to, or blend with a money bill, any matter, clause or thing not immediately relating to, and necessary for the imposing, assessing, levying or applying the taxes or supplies, to be raised for the support of government or the current expenses of the state."

This additional provision defining money bills is interesting in view of the questions that have been raised between the national senate and house of representatives in connection with the provision of the national constitution upon the subject: "And to prevent altercation about such bills, it is declared, that no bill imposing duties or customs for the mere regulation of commerce, or inflicting fines for the reformation of morals, or to enforce the execution of the laws, by which an incidental revenue may arise, shall be accounted a money bill."

In the Massachusetts constitution also it was provided that all "money bills" should originate in the house of representatives, the power of amendment, however, being reserved to the senate; and in the constitution of New Hampshire, adopted in 1784, the same provision appears.

In the constitution of New Jersey, of 1776, the limitation of the powers of the council was expressed as follows: "That the council shall also have power to prepare bills to pass into laws, and have other like powers as the assembly, and in all respects be a free and independent branch of the legislature of this colony, save only that they shall not prepare or alter any money bill—which shall be the privilege of the assembly."

The constitution of South Carolina (1776) provided that "all money bills for the support of government shall originate in the general assembly and shall not be altered or amended by the legislative council, but may be rejected by them."

In the first constitution of Virginia (1776) this provision appears: "All laws shall originate in the house of delegates, to be approved or rejected by the senate, or to be amended with consent of the house of delegates, except money bills, which in no instance shall be altered by the senate, but wholly approved or rejected."

Some other general provisions, found in the first state constitutions, relating to the powers of the

state legislatures, were that each house should be the judge of the election and qualification of its members, should have power to sit upon its own adjournments—in some cases with the limitation that neither should adjourn without the consent of the other except for two or three days.

The assembly, or popular branch, was invested with the power of presenting articles of impeachment against public officers to be tried before the council or senate.

The returns of the votes for governor were to be canvassed by the general assembly and the result declared; in the event of a tie the choice was devolved upon the legislature. The provisions touching these matters were not, of course, uniform in all states. I call attention to these matters here as, in some cases, furnishing the suggestion, and in some cases almost the very form afterwards adopted in the national constitution.

## THE EXECUTIVE

Let us now notice briefly the provision made for the exercise of the executive powers in these constitutions.

In Delaware provision was made for the choice by joint ballot of both houses, "to be taken in the house of assembly," of a president or chief magistrate, whose term was three years. He was authorized to draw for moneys appropriated by the legis-

lature and required to account for the same. During the recess of the legislature, and for a period not exceeding thirty days, he was allowed to lay embargoes and prohibit the exportation of any commodity. A limited pardoning power was given him, and other general executive powers of government.

On the death, inability or absence from the state of the president or chief magistrate the office was devolved upon the speaker of the council "as vice-president"; and, in case of his death, inability, or absence from the state, the powers of "the presidency" were devolved upon the speaker of the house of assembly.

In Georgia the chief executive officer was styled governor and was chosen by the house of representatives on the first day of their meeting. He was authorized, with the advice of the executive council, to exercise the executive powers according to the constitution and laws of the state; to call the assembly together in an emergency and to fill vacancies in office until the next general election. He was to preside in the executive council at all times except "when they are taking into consideration and perusal the laws and orders offered to them by the house of assembly." He was elected by popular vote to hold office for one year, and was not eligible for more than one year in three. In case of the sickness or absence of the governor the presi-

dent of the executive council was to exercise the powers of the office.

Neither here nor in the case of Delaware does it seem that any power was given to the governor either to approve or disapprove of acts of the legislature. In Georgia, as we have seen, the acts of the legislature were submitted to the executive council for advice and amendment; but the governor—usually the presiding officer—was excluded from the sittings of the council when they were exercising this legislative power.

In Maryland the chief executive was also designated by the title of governor; was elected annually by the "joint ballot of both houses to be taken in each house separately." In case of a tie a second ballot was to be taken, confined to the persons who, on the first ballot, had an equal number of votes; and, if a tie again resulted, the election was to be determined by lot. The governor could not continue in office longer than three years, and was afterwards ineligible for four years. On the death or resignation of the governor the "first named of the council, for the time being," acted as governor. The governor was vested with general executive powers under the law, but was expressly restrained from the exercise, under any pretense, of any power or prerogative "by virtue of any law, statute, or custom of England or Great Britain." He was authorized, with the advice and consent of

the council, to appoint the chancellor, judges, justices, attorney-general and other civil officers, except such as had been otherwise specially provided for, and to suspend any officer not appointed during good behavior. It was his duty to sign all bills passed by the general assembly and to affix the great seal of state.

In Massachusetts "a supreme executive magistrate," to be styled the governor of the commonwealth of Massachusetts, was provided for. He was to be chosen annually by popular vote; the returns were to be canvassed and declared before the senate and house of representatives; the house of representatives, by ballot, was to select two of the four persons having the highest number of votes, and the senate was then, by ballot, to elect one of these, who should be declared governor. He was commander-in-chief of the military forces of the state, appointed all judicial officers and other officers designated, "by and with the advice and consent of the council." The election of a lieutenant-governor was also provided for who, in case of the death or absence of the governor, performed the duties of the office during such vacancy. All bills and resolves of the senate or house of representatives, before having force as laws, were required to be laid before the governor "for his revisal." If he approved he was to signify his approval by signing the bill, "but, if he have any objection to the passing of such bill or resolve, he

shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in whichsoever the same shall have originated, who shall enter the objections sent down by the governor, at large, on their record, and proceed to reconsider the said bill or resolve; but if, after such reconsideration, two-thirds of the said senate or house of representatives shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of law; but in all such cases the vote of both houses shall be determined by yeas and nays; and the names of the persons voting for or against the said bill or resolve shall be entered on the public records of the commonwealth. And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor within five days after it shall have been presented, the same shall have the force of law."

In the first brief and temporary frame of government adopted in New Hampshire, 1776, no provision was made for a separate executive department; the executive duties were assumed by the house of representatives and council; but in the constitution of 1784 "a supreme executive magistrate" was provided for who was styled the president of

the state of New Hampshire. He was elected annually by a popular vote, which was to be canvassed and declared by the senate and house of representatives; and, if there was no election, the same method of choice was adopted as in Massachusetts. The president was the presiding officer of the senate and had "a vote equal with any other member," and a casting vote in case of a tie. This constitution was closely modeled on that of Massachusetts.

The constitution of New Jersey, 1776, vested the government in a governor, legislative council and general assembly. The governor was chosen annually by the council and assembly in a joint meeting, and he became president of the council, where he had a casting vote. The council chose a vice-president, who was authorized to act in the absence of the governor.

In New York the first constitution provided that the supreme executive power and authority should be vested in a governor, who was to be chosen at a popular election and to hold office for three years. He was to "inform the legislature at every session of the condition of the state, so far as may respect his department; to recommend such matters to their consideration as shall appear to him to concern its good government, welfare and prosperity; to correspond with the continental congress and other states; to transact all necessary business with the officers of government, civil and military; to take care that

the laws are faithfully executed, to the best of his ability, and to expedite all such measures as may be resolved upon by the legislature." The governor, the chancellor and the judges of the supreme court, or any two of them, were constituted a council to revise bills about to be passed by the legislature. If the council, or a majority of them, were of the opinion that the bill should not become a law it was to be returned to the house in which it originated with the objections. If, upon a reconsideration, two-thirds of each branch still agreed to the law, notwithstanding the objections, the bill became a law. It was provided, however, that if a bill should not be returned within ten days after the presentation to the council it should be a law, unless the legislature "shall, by their adjournment, render a return of the said bill within ten days impracticable, in which case the bill shall be returned on the first day of the meeting of the legislature, after the expiration of the said ten days." A lieutenant-governor was provided for, to be chosen in the same manner as the governor. He was, by virtue of his office, president of the senate, and upon an equal division had a casting vote. In case of the death, resignation or absence of the governor from the state the lieutenant-governor exercised the powers of the office. In case the lieutenant-governor should die, resign, or be absent from the state, the president of

the senate in like manner succeeded to the office of governor.

In North Carolina the senate and house, at their first meeting, elected a governor by ballot for one year. General executive powers were given to him; and, in case of his death, inability or absence, the speaker of the senate, for the time being, exercised the powers of governor; and in the case of his death, absence or inability, the speaker of the house of commons assumed the office. No veto power was vested in the governor.

In Pennsylvania the supreme executive power was vested in a president and council. The executive council was chosen by popular vote, and the president and vice-president annually by the joint ballot of the general assembly and council.

In South Carolina provision was made for the choice by the general assembly and council of a president and commander-in-chief and a vice-president. It was provided that "bills having passed the general assembly and legislative council may be assented to or rejected by the president and commander-in-chief. Having received his assent, they shall have all the force and validity of a general act of this colony"; and, further, "where a bill has been rejected it may, on a meeting after adjournment of not less than three days of the general assembly and legislative council, be brought in again." I think the provision which I now quote from the

constitutions of South Carolina of 1776 and 1778 is the only one in any of the state constitutions which so much as suggests that a state might come into treaty relations with other states. The provision is as follows: "That the president and commander-in-chief shall have no power to make war or peace, or enter into any final treaty without the consent of the general assembly and legislative council." This peculiar provision does not appear in the constitution of 1790.

The constitution of Virginia, 1776, provided for a governor or chief magistrate, to be chosen annually by joint ballot of both houses. With the advice of the council of state he was authorized to exercise the executive powers of government according to the laws of the commonwealth. The privy council, also chosen by the legislature, were authorized to choose out of their own number a president who, in case of the death, inability or absence of the governor, was to act as lieutenant-governor.

These state constitutions greatly instructed the members of the constitutional convention of 1787 in their work. In fact, an outline model of a free, representative government—its grand subdivisions —the division of powers between these and the general limitations upon each department,—was offered to their hand in these state constitutions, and the suggestion was obvious that the more nearly the general government followed these outlines the more

likely it was to meet with popular favor. I do not mean to be understood as saying that these state constitutions themselves were in any strict sense creations. They were largely the development and modification of principles and usages of the English constitution, which had before been enlarged, defined and modified by a century and a half of American colonial experience. But the work of applying these principles, of organizing a government without a king, or a house of lords—a republic deriving all of its powers from the people and exercising defined powers, through officers having limited terms, and by prescribed methods, was a task so large and delicate that the first state constitution may well excite our admiration and surprise. My chief object, however, in giving you so full an abstract of their provisions is that you may see their likeness each to the other and to the national constitution.

When we contrast these admirable state constitutions with the articles of confederation, we do not wonder that the states became strong and the union weak.

The state service attracted the competent and the ambitious, and only the most resolute and the most obscure remained in congress. The condition of the federation was so strikingly like that of a barrel from which the hoops had been withdrawn, ready to fall to pieces at a touch, that one of the favorite toasts of this period was "A hoop to the barrel."

Speaking of the situation of congress about this time, Mr. McMaster, in his History of the People of the United States, says: "The stimulus derived from the presence of a hostile army was withdrawn and the representation and attendance fell off fast. Delaware and Georgia ceased to be represented. From the ratification of the treaty to the organization of the government under the constitution six years elapsed, and during those six years congress, though entitled to ninety-one members, was rarely attended by twenty-five. The house was repeatedly forced to adjourn day after day for want of a quorum. On more than one occasion these adjournments covered a period of thirteen consecutive days. * * * No occasion, however impressive or important, could call out a large attendance. Seven states, represented by twenty delegates, witnessed the resignation of Washington. Twenty-three members, sitting for eleven states, voted for the ratification of the treaty. * * * Neglected by its own members, insulted and threatened by its mutinous troops, reviled by the press and forced to wander from city to city in search of an abiding place, its acts possessed no national importance whatever."

In the South Carolina convention for the ratification of the constitution, the Hon. Jacob Reed said that he "looked on the boasted efficiency of congress to be farcical, and instanced two cases in proof of his opinion. One was that when the treaty should

have been ratified a sufficient number of members could not be collected in congress for that purpose, so that it was necessary to despatch a frigate, at the expense of four thousand dollars, with particular directions to Mr. Adams to use his endeavors to gain time. His application proved successful; otherwise very disagreeable consequences must have ensued. The other case was, a party of Indians came to Princeton for the purpose of entering into an amicable treaty with congress; before it could be concluded, a member went to Philadelphia to be married, and his secession had nearly involved the western country in all the miseries of war."

# THE STATUS OF ANNEXED TERRITORY AND OF ITS FREE CIVILIZED INHABITANTS

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A legal argument upon this subject is quite outside of my purpose, which is to consider, in a popular, rather than a professional way, some of the questions that arise, some of the answers that have been proposed, and some of the objections to these answers.

We have done something out of line with American history, not in the matter of territorial expansion, but in the character of it. Heretofore, the regions we have taken over have been contiguous to us, save in the case of Alaska—and, indeed, Alaska is contiguous, in the sense of being near. These annexed regions were also, at the time of annexation, either unpeopled or very sparsely peopled, by civilized men, and were further, by their situation, climate and soil, adapted to the use of an increasing American population. We have now acquired in-

sular regions, situated in the tropics, and in another hemisphere, and hence unsuitable for American settlers, even if they were not, as they are, already populated, and their lands already largely taken up.

We have taken over peoples rather than lands, and these chiefly of other race stocks—for there are "diversities of tongues." The native labor is cheap and threatens competition, and there is a total absence of American ideas and methods of life and government among the eight or more millions of inhabitants in the Philippines. We have said that the Chinese will not "homologate"; and the Filipinos will certainly be slow. Out of the too late contemplation of these very real and serious problems has arisen the proposition to solve them, as many think, by wresting our government from its constitutional basis; or at least, as all must agree, by the introduction of wholly new views of the status of the people of the territories, and of some startlingly new methods of dealing with them. It is not open to question, I think, that, if we had taken over only the Sandwich islands and Porto Rico, these new views of the status of the people of our territories, and these new methods of dealing with them, would never have been suggested or used.

The question of the constitutional right of the United States to acquire territory, as these new regions have been acquired, must, I suppose, be taken by every one to have been finally adjudged in favor

of that right. The supreme court is not likely to review the decision announced by Chief Justice Marshall.

It is important to note, however, that the great chief-justice derives the power to acquire territory, by treaty and conquest, from the constitution itself. He says:

"The constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently that government possesses the power of acquiring territory either by conquest or by treaty."

While this decision stands, there is no room for the suggestion that the power of the United States to acquire territory, either by a conquest confirmed by treaty, or by a treaty of purchase from a nation with which we are at peace, is doubtful, and as little for the suggestion that this power is an extra-constitutional power. The people, then, have delegated to the president and congress the power to acquire territory by the methods we have used in the cases of Porto Rico and the Hawaiian and Philippine islands. But some have suggested that this power to acquire new territory is limited to certain ends; that it can only be used to acquire territory that is to be, or is capable of being, erected into states of the Union. If this view were allowed, the attitude of the courts to the question would not be much changed; for they could not inquire as to the

purposes of congress, nor, I suppose, overrule the judgment of congress as to the adaptability of territory for the creation of states. The appeal would be to congress to limit the use of the power.

The islands of Hawaii, of Porto Rico and of the Philippine archipelago have been taken over, not for a temporary purpose, as in the case of Cuba, but to have and to hold forever, as a part of the region over which the sovereignty of the United States extends. We have not put ourselves under any pledge as to them, at least not of a written sort. Indeed, we have not, it is said, made up our minds as to anything affecting the Philippines, save this: that they are a part of our national domain and that the inhabitants must yield obedience to the sovereignty of the United States, so long as we choose to hold them.

Our title to the Philippines has been impeached by some upon the ground that Spain was not in possession when she conveyed them to us. It is a principle of private law that a deed of property adversely held is not good. If I have been ejected from a farm to which I claim title and another is in possession under a claim of title, I must recover the possession before I can make a good conveyance. Otherwise, I sell a law suit and not a farm, and that the law counts to be immoral. It has not been shown, however, that this principle has been incorporated into international law; and, if that could be shown, there

would still be need to show that Spain had been effectively ousted.

It is very certain, I suppose, that if Great Britain had, during our revolutionary struggle, concluded a treaty of cession of the colonies to France, we would have treated the cession as a nullity and continued to fight for liberty against the French. No promises of liberal treatment by France would have appeased us.

But what has that to do with the Philippine situation? There are so many points of difference. We were Anglo-Saxons! We were capable of self-government. And, after all, what we would have done under the conditions supposed has no bearing upon the law of the case. It is not to be doubted that any international tribunal would affirm the completeness of our legal title to the Philippines.

The questions that perplex us relate to the status of these new possessions, and to the rights of their civilized inhabitants who have elected to renounce their allegiance to the Spanish crown, and either by choice or operation of law have become American—somethings. What? Subjects or citizens? There is no other status, since they are not aliens any longer, unless a newspaper heading that recently attracted my attention offers another. It ran thus: "Porto Ricans not citizens of the United States *proper.*" Are they citizens of the United States *improper,* or improper citizens of the United States?

It seems clear that there is something improper. To call them "citizens of Porto Rico" is to leave their relations to the United States wholly undefined.

Now, in studying the questions whether the new possessions are part of the United States, and their free civilized inhabitants citizens of the United States, the constitution should, naturally, be examined first. Whatever is said there, is final—any treaty or act of congress to the contrary notwithstanding. The fact that a treaty must be constitutional, as well as an act of congress, seems to have been overlooked by those who refer to the treaty of cession as giving congress the right to govern the people of Porto Rico, who do not retain their Spanish allegiance, according to its pleasure. Has the queen regent, with the island, decorated congress with one of the jewels from the Spanish crown?

In Pollard v. Hogan, 3 Howard, the court says:

"It can not be admitted that the king of Spain could by treaty, or otherwise, impart to the United States any of his royal prerogatives; and much less can it be admitted that they have capacity to receive or power to exercise them."

A treaty is a part of the supreme law of the land in the same sense that an act of congress is, not in the same sense that the constitution is. The constitution of the United States can not be abrogated or impaired by a treaty. Acts of congress and treaties are only a part of the "supreme law of the land"

when they pursue the constitution. The supreme court has decided that a treaty may be abrogated by a later statute, on the ground that the statute is the later expression of the sovereign's will. Whether a statute may be abrogated by a later treaty, we do not know; but we do know that neither a statute nor a treaty can abrogate the constitution.

If the constitution leaves the question open whether the inhabitants of Porto Rico shall or shall not upon annexation become citizens, then the president and the senate may exercise that discretion by a treaty stipulation that they shall or shall not be admitted as citizens; but if, on the other hand, the constitution gives no such discretion, but itself confers citizenship, any treaty stipulation to the contrary is void. To refer to the treaty in this connection is to beg the question.

If we seek to justify the holding of slaves, in a territory acquired by treaty, or the holding of its civilized inhabitants in a condition less favored than that of citizenship, by virtue of the provisions of a treaty, it would seem to be necessary to show that the constitution, in the one case, allows slavery, and, in the other, a relation of civilized people to the government that is not citizenship.

Now the constitution declares (14th amendment) that "all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States." This disposes of the

question, unless it can be maintained that Porto Rico is not a part of the United States.

But the theory that any part of the constitution, of itself, embraces the territories and their people, is contested by many. Congress seems to have assumed the negative, though among the members there was not entire harmony as to the argument by which the conclusion was reached. It is contended, by most of those who defend the Porto Rican bill, that the constitution expends itself wholly upon that part of the national domain that has been organized into states, and has no reference to, or authority in, the territories, save as it has constituted a government to rule over them.

No one contends that every provision of the constitution applies to the territories. Some of them explicitly relate to the states only. The contention of those who oppose the Porto Rican legislation is that all of those general provisions of the constitution which impose limitations upon the powers of the legislative, executive and judicial departments must apply to all regions and people where or upon whom those powers are exercised. And, on the other hand, those who deny most broadly that the constitution applies to the territories seem practically to allow that much of it does. The powers of appointment and pardon in the territories, the confirmation of territorial officers, the methods of passing laws to govern the territories, the keeping and disbursement of

federal taxes derived from the territories, the veto power, and many other things, are pursued as if the constitution applied to the cases.

But, in theory, it is claimed by these that no part of the constitution applies except the thirteenth amendment, which prohibits slavery, and that only because the prohibition expressly includes "any place subject to their jurisdiction." This amendment was proposed by congress on February 1, 1865—the day on which Sherman's army left Savannah on its northern march; and the words "any place subject to their jurisdiction" were probably added because of the uncertainty of the legal status of the states in rebellion, and not because of any doubt as to whether Nebraska, then a territory, was a part of the United States.

The view that some other general limitations of the constitution upon the powers of congress must relate to all regions and all persons was, however, adopted by some members of the Senate committee in the report upon the Porto Rican bill, where it is said:

"Yet, as to all prohibitions of the constitution laid upon congress while legislating, they operate for the benefit of all for whom congress may legislate, no matter where they may be situated, and without regard to whether or not the provisions of the constitution have been extended to them; but this is so because the congress, in all that it does, is subject to and governed by those restraints and prohibitions.

As, for instance, congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; no title of nobility shall be granted; no bill of attainder or *ex post facto* law shall be passed; neither shall the validity of contracts be impaired, nor shall property be taken without due process of law; nor shall the freedom of speech or of the press be abridged; nor shall slavery exist in any place subject to the jurisdiction of the United States. These limitations are placed upon the exercise of the legislative power without regard to the place or the people for whom the legislation in a given case may be intended."

That is to say, every general constitutional limitation of the powers of congress applies to the territories. The brief schedule of these limitations given by the committee is all put in the negative form, "congress shall not"; but surely it was not meant that there may not be quite as effective a limitation by the use of the affirmative form. If a power is given to be used in one way only, all other uses of it are negatived by necessary implication. When it is said, "All duties, imposts, and excises shall be uniform throughout the United States," is not that the equivalent of "No duty or excise that is not uniform shall be levied in the United States?" And is not the first form quite as effective a limitation of the legislative power over the subject of indirect taxation as that contained in

the fourth clause of the section is upon the power to lay direct taxes?

In the latter the negative form is used, thus:

"No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken."

This discrimination between express and implied limitations, benevolently attempted to save for the people of the territories the bill of rights provision of the constitution, will not, I think, endure discussion.

There are only three views that may be offered, with some show of consistency in themselves:

First, that congress, the executive and the judiciary are all created by the constitution as governing agencies of the nation called the United States; that their powers are defined by the constitution and run throughout the nation; that all the limitations of their powers attach to every region and to all civilized people under the sovereignty of the United States, unless their inapplicability appears from the constitution itself; that every guaranty of liberty, including that most essential one, uniform taxation, is to be allowed to every free civilized man and woman who owes allegiance to the United States; that the use of the terms "throughout the United States" does not limit the scope of any constitutional provision to the states that would otherwise be applicable to the territories as well; but that these terms

include the widest sweep of the nation's sovereignty, and so the widest limit of congressional action.

Second, that the terms, "The United States," define an inner circle of the national sovereignty composed of the states alone; that, whenever those terms are used in the constitution, they must be taken to have reference only to the region and to the people within this inner circle; but that, when these terms of limitation are omitted, the constitutional provisions must, unless otherwise limited, be taken to include all lands and people in the outer circle of the national sovereignty.

Third, that the constitution has relation only to the states and their people; that all constitutional limitations of the powers of congress and the executive are to be taken to apply only to the states and their citizens; that the power to acquire territory is neither derived from the constitution, nor limited by it, but is an inherent power of national life; that the government we exercise in the territories is not a constitutional government, but an absolute government, and that all or any of the things prohibited by the constitution as to the states, in the interest of liberty, justice and equality, may be done in the territories; that, as to the territories, we are under no restraints save such as our own interests or our benevolence may impose.

I say "benevolence"; but must not that quality be submerged, before this view of the constitution is pro-

mulgated? It seems to have had its origin in a supposed commercial necessity, and we may fairly conclude that other recurring necessities will guide its exercise. Is it too much to say that this view of the constitution is shocking?

Within the states, it is agreed that the powers of the several departments of the national government are severely restrained. We read that congress shall have power, and again that congress shall not have power. But neither these grants nor these inhibitions have, it is said, any relation to the territories. Against the laws enacted by the congress, or the acts done by the executive, there is no appeal, on behalf of the people of the territories, to any written constitution, or bill of rights, or charter of liberty. We offer them only this highly consolatory thought: a nation of free Americans can be trusted to deal benevolently with you.

How obstinately wrong we were in our old answer to the Southern slave-holder! It is not a question of kind or unkind treatment, but of human rights; not of the good or bad use of power, but of the power, we said. And so our fathers said, in answer to the claim of absolute power made on behalf of the British parliament. As to the states, the legislative power of congress is "all legislative powers herein granted." (Art. I, Sec. 1.) As to the territories, it is said to be all legislative power—all that any parliament ever had or ever claimed to have, and as

much more as we may claim—for there can be no excess of pretension where power is absolute. No law relating to the territories, passed by congress, can, it is said, be declared by the supreme court to be inoperative, though every section of it should contravene a provision of the constitution.

An outline of a possible law may aid us to see more clearly what is involved:

Sec. 1. Suspends permanently the writ of *habeas corpus* in Porto Rico.

Sec. 2. Declares an attainder against all Porto Ricans who have displayed the Spanish flag since the treaty of peace.

Sec. 3. Grants to the native mayors of Ponce and San Juan the titles of Lord Dukes of Porto Rico, with appropriate crests.

Sec. 4. Any Porto Rican who shall speak disrespectfully of the congress shall be deemed guilty of treason. One witness shall be sufficient to prove the offense, and on conviction the offender shall have his tongue cut out; and the conviction shall work corruption of blood.

Sec. 5. The Presbyterian church shall be the Established church of the island, and no one shall be permitted to worship God after any other form.

Sec. 6. All proposed publications shall be submitted to a censor and shall be printed only after he has approved the same. Public meetings for the dis-

cussion of public affairs are prohibited and no petitions shall be presented to the government.

Sec. 7. No inhabitant of Porto Rico shall keep or bear arms.

Sec. 8. The soldiers of the island garrison shall be quartered in the houses of the people.

Sec. 9. The commanding officer of the United States forces in the island shall have the right, without any warrant, to search the person, house, papers and effects of any one suspected by him.

Sec. 10. Any person in Porto Rico, in civil life, may be put upon trial for capital or other infamous crimes upon the information of the public prosecutor, without the presentment or indictment of a grand jury; may be twice put in jeopardy for the same offense; may be compelled to be a witness against himself, and may be deprived of life, liberty or property without due process of law, and his property may be taken for public uses without compensation.

Sec. 11. Criminal trials may, in the discretion of the presiding judge, be held in secret, without a jury, in a district prescribed by law after the commission of the offense, and the accused shall, or not, be advised before arraignment of the nature or cause of the accusation, and shall, or not, be confronted with the witnesses against him, and have compulsory process to secure his own witnesses, as the presiding judge may in his discretion order.

Sec. 12. There shall be no right in any suit at common law to demand a jury.

Sec. 13. A direct tax is imposed upon Porto Rico for federal uses without regard to its relative population; the tariff rates at San Juan are fixed at 50 per cent. and those at Ponce at 15 per cent. of those levied at New York.

New Mexico, or Arizona, or Oklahoma might be substituted for Porto Rico in the bill; for, I think, those who affirm that the constitution has no relation to Porto Rico do so upon grounds that equally apply to all other territories.

Now, no one supposes that congress will ever assemble in a law such shocking provisions. But, for themselves, our fathers were not content with an assurance of these great rights that rested wholly upon the sense of justice and benevolence of the congress. The man whose protection from wrong rests wholly upon the benevolence of another man or of a congress, is a slave—a man without rights. Our fathers took security of the governing departments they organized; and that, notwithstanding the fact that the choice of all public officers rested with the people. When a man strictly limits the powers of an agent of his own choice, and exacts a bond from him, to secure his faithfulness, he does not occupy strong ground when he insists that another person, who had no part in the selection, shall give the agent full powers without a bond.

If there is anything that is characteristic in American constitutions, state and national, it is the plan of limiting the powers of all public officers and agencies. "You shall do this; you may do this; you shall not do this"—is the form that the schedule of powers always takes. This grew out of our experience as English colonies. A government of unlimited legislative or executive powers is an un-American government. And, for one, I do not like to believe that the framers of the national constitution and of our first state constitutions were careful only for their own liberties.

This is the more improbable when we remember that the territory then most likely to be acquired would naturally be peopled by their sons. They cherished very broad views as to the rights of men. Their philosophy of liberty derived it from God. Liberty was a divine gift to be claimed for ourselves only upon the condition of allowing it to "all men." They would write the law of liberty truly, and suffer for a time the just reproach of a departure from its precepts that could not be presently amended.

It is a brave thing to proclaim a law that condemns your own practices. You assume the fault and strive to attain. The fathers left to a baser generation the attempt to limit God's law of liberty to white men. It is not a right use of the fault of slavery to say that, because of it, our fathers did not mean "all men." It was one thing to tolerate

an existing condition that the law of liberty condemned, in order to accomplish the union of the states, and it is quite another thing to create a condition contrary to liberty for a commercial profit.

In a recent discussion of these questions, sent me by the author, I find these consolatory reflections: "And yet the inalienable rights of the Filipinos, even if not guaranteed by the constitution, are amply secured by the *fundamental, unwritten* laws of our civilization." Does this mean that the specific guarantees of individual liberty found in our constitution have become a part of "our civilization," and that they apply in Porto Rico and the Philippines in such a sense that, if there is any denial of them by congress or the executive, the courts can enforce them and nullify the law that infringes them? If that is meant, then as to all such rights this discussion is tweedledum and tweedledee—the constitution does not apply, but all these provisions of it are in full force, notwithstanding.

Perhaps, however, it should be asked further, whether the rule of the uniformity of taxation is a part of the "law of our civilization"; for, without it, all property rights are unprotected. The man whose property may be taxed arbitrarily, without regard to uniformity within the tax district and without any limitation as to the purposes for which taxes may be levied, does not own anything; he is a tenant at will.

But if these supposed "laws of our civilization" are not enforcible by the courts, and rest wholly for their sanction upon the consciences of presidents and congresses, then there is a very wide difference. The one is ownership; the other is charity. The one is freedom; the other slavery—however just and kind the master may be.

The instructions of the president to the Taft Philippine commission seem to allow that any civil government under the authority of the United States, that does not offer to the people affected by it the guarantees of liberty contained in the bill of rights sections of the constitution, is abhorrent. Speaking of these, he said:

"Until congress shall take action, I directed that, upon every division and branch of the government of the Philippines must be imposed these inviolable rules:

" 'That no person shall be deprived of life, liberty or property without due process of law; that private property shall not be taken for public use without just compensation; that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense; that excessive bail shall not be required, nor excessive fines im-

posed, nor cruel and unusual punishment inflicted; that no person shall be put twice in jeopardy for the same offense, or be compelled in any criminal case to be a witness against himself; that the right to be secure against unreasonable searches and seizures shall not be violated; that neither slavery nor involuntary servitude shall exist except as a punishment for crime; that no bill of attainder, or *ex post facto* law shall be passed; that no law shall be passed abridging the freedom of speech or of the press, or of the rights of the people to peaceably assemble and petition the government for a redress of grievances; that no law shall be made respecting the establishment of religion, or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed.'"

The benevolent disposition of the president is well illustrated in these instructions. He conferred freely —"until congress shall take action"—upon the Filipinos, who accepted the sovereignty of the United States and submitted themselves to the government established by the commission, privileges that our fathers secured only after eight years of desperate war. There is this, however, to be noted, that our fathers were not content to hold these priceless gifts under a revocable license. They accounted that to hold these things upon the tenure of another man's

benevolence was not to hold them at all. Their battle was for rights, not privileges—for a constitution, not a letter of instructions.

The president's instructions apparently proceed upon the theory that the Filipinos, after civil government has superseded the military control, are not endowed under our constitution, or otherwise, with any of the rights scheduled by him; that, if he does nothing, is silent, some or all of the things prohibited in his schedule may be lawfully done upon, and all the things allowed may be denied to, a people who owe allegiance to that free constitutional government we call the United States of America.

It is clear that those Porto Ricans who have not, under the treaty, declared a purpose to remain Spanish subjects, have become American citizens or American subjects. Have you ever read one of our commercial treaties with Great Britain or Germany, or any other of the kingdoms of the world? These treaties provide for trade intercourse, and define and guarantee the rights of the people of the respective nations when domiciled in the territory of the other. The descriptive terms run like this: "the subjects of Her Britannic Majesty" on the one part, and "the citizens of the United States" on the other. Now, if the commercial privileges guaranteed by these treaties do not, in their present form, include the Porto Ricans who strewed flowers before our troops when they entered the island, we ought at once to propose

to our "Great and Good Friends," the kings and queens of the Earth, a modification of our conventions in their behalf.

Who will claim the distinction of proposing that the words "and subjects" be introduced after the word "citizens"? There will be no objection on the part of the king, you may be sure; the modification will be allowed smilingly.

We have never before found it necessary to treat the free civilized inhabitants of the territories otherwise than as citizens of the United States.

It is true, as Mr. Justice Miller said, that the exclusive sovereignty over the territories is in the national government; but it does not follow that the nation possesses the power to govern the territories independently of the constitution. The constitution gives to congress the right to exercise "exclusive legislation" in the District of Columbia; but "exclusive" is not a synonym of "absolute." When the constitution says that "treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort," there is a limitation of the legislative power; and it necessarily extends to every venue where the crime of treason against the United States may be laid, and to every person upon whom its penalties may be imposed.

This constitutional provision defining the crime of treason and prescribing the necessary proofs is a bill

of rights provision. In England, under Edward II, "there was," it was said, "no man who knew how to behave himself, to do, speak or say, for doubt of the pains of such treasons." The famous statute of Edward III, defining treasons, James Wilson declares, "may well be styled the legal Gibraltar of England."

Mr. Madison, speaking of this section of the constitution, says in the Federalist:

"But as new fangled and artificial treasons have been the great engines by which violent factions, the natural offspring of free government, have usually wreaked their malignity on each other, the convention have with great judgment opposed a barrier to this peculiar danger, by inserting a constitutional definition of the crime," etc.

Mr. Madison believed that there was a real danger that statutes of treason might be oppressively used by congress. What have we been doing, or what have we a purpose to do, that we find it necessary to limit the safeguards of liberty found in our constitution, to the people of the states? Is it that we now propose to acquire territory for colonization, and not, as heretofore, for full incorporation? Is it that we propose to have crown colonies, and must have crown law? Is it that we mean to be a world power, and must be free from the restraints of a bill of rights? We shall owe deliverance a second time to these principles of human liberty, if

they are now the means of delivering us from un-American projects.

The particular provision of the constitution upon which congress seems to have balked, in the Porto Rican legislation, was a revenue clause, viz., the first paragraph of section 8 of Article I, which reads:

"The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States."

There was only one door of escape from allowing the application of this clause to Porto Rico. It was to deny that the territories are part of the United States.

It will be noticed that the descriptive term, "The United States," is twice used in the one sentence—once in the clause defining the purposes for which only duties and imposts may be levied, and once in the clause requiring uniformity in the use of the power. Is there any canon of construction that authorizes us to give to the words, "The United States," one meaning in the first use of them and another in the second? If in the second use the territories are excluded, must they not also be excluded in the first? If the rule of uniformity does not apply to the territories, how can the power to tax be used in the United States, to pay the debts and pro-

vide for the defense and general welfare of the territories? Can duties be levied in New York and other ports of the states, to be expended for local purposes in Porto Rico, if the island is not a part of the United States? Are the debts that may be contracted by what the law calls the body politic of "The People of Porto Rico" for local purposes, part of the debt of the United States—notwithstanding that the island is no part of the United States and the people are not citizens of the United States? But some one will say that the island is one of our outlying defenses, and that fortifications and naval stations and public highways there are necessary to the "common defense." Well, is it also true that education and poor relief, and fire and police and health protection, and all other agencies of local order and betterment in Porto Rico, are included in the words "the general welfare of the United States"? It would seem that a region of which it can be said that its general welfare is the general welfare of the United States, must be a part of the United States, and its people citizens of the United States.

For the first time congress has laid tariff duties upon goods passing from a territory into the states. The necessity for this radical departure from the established practice of the government seems to have been to find a safe basis for the holding and governing of regions, the free introduction of whose

products might affect the home industries unfavorably, and the admission of whose people to citizenship might imply future statehood—or at least the right of migration and settlement in the states of an undesirable population. That the diversity of tongues in the Philippines, and the utter lack of the American likeness in everything there, presented strong reasons against the acquisition of the islands, I freely admit.

It must also be conceded that when, as we are told, Providence laid upon us the heavy duty of taking over and governing these islands, it was very natural that we should seek to find a way of governing them that would save us from some of the unpleasant consequences which a discharge of the duty in the old way involved. But do we not incur a greater loss and peril from the new doctrine, that our congress and executive have powers not derived from the constitution, and are subject to no restraints or limitations in the territories, save such as they may impose upon themselves?

Are the civil rights of the dwellers on the mainland well secured against the insidiousness of greed and ambition, while we deny to the island dwellers, who are held to a strict allegiance, the only sure defense that civil rights can have—the guarantees of constitutional law? Burke saw in the absolute powers claimed for parliament, in the Ameri-

can colonies, danger to the liberties of parliament itself. As so often quoted, he said:

"For we are convinced, beyond a doubt, that a system of dependence which leaves no security to the people for any part of their freedom in their own hands, can not be established in any inferior member of the British empire without consequently destroying the freedom of that very body in favor of whose boundless pretensions such a scheme is adopted. We know and feel that arbitrary power over distant regions is not within the competence, nor to be exercised agreeably to the forms or consistently with the spirit, of great popular assemblies."

Are we, in this day of commercial carnival, incapable of being touched by such considerations, either in our fears or in our sense of justice? Is it not likely to be true that the moral tone of the republic —our estimation of constitutional liberty—will be lessened by the creation of a body of civilized people over whom our flag waves as an emblem of power only? The flag can not stand for the benevolent policies of an administration. It stands for more permanent things—for things that changing administrations have no power to change. Is it not in the nature of a mockery to raise the flag in Porto Rico and bid its hopeful people hail it as an emblem of emancipation, while the governor we have sent them reads a proclamation, from the foot of the staff, announcing the absolute power of congress over them?

How would the pioneers of the West have regarded a declaration that they were not citizens of the United States, or a duty laid upon the furs they sent to the states, or upon the salt and gunpowder sent from the states in exchange, even if a preference of 85 per cent. had been given them over the people of Canada? It is safe to say that no such interpretation of the constitution or of the rights of the people of a territory, will ever be offered to men of American descent.

If the constitution, so far as it is applicable, attaches itself, whether congress will or no, to all territory taken over as a part of the permanent territory of the United States, it is there to stay as fundamental law. But if it is not so, an act of congress declaring that the constitution is "extended" is not fundamental law, but statute law, and may be repealed and is repealed by implication, *pro tanto,* whenever congress passes a law in conflict with the provisions of the "extended" constitution. If the constitution as such, as fundamental law, is extended over new territory, it must be the result of an act done—an act the effect of which is in itself, not in any accompanying declaration.

If the act of annexation does not carry the constitution into a territory, I can think of nothing that will, save the act of admitting the territory as a state.

The situation of the Porto Rican people is scarcely less mortifying to us than to them; they owe alle-

giance but have no citizenship. Have we not spoiled our career as a delivering nation? And for what? A gentleman connected with the beet-sugar industry, seeing my objections to the constitutionality of the law, and having a friendly purpose to help me over them, wrote to say that the duty was absolutely needed to protect the beet-sugar industry. While appreciating his friendliness, I felt compelled to say to him that there was a time for considering the advantages and disadvantages of a commercial sort involved in taking over Porto Rico, but that that time had passed; and to intimate to him that the needs of the beet-sugar industry seemed to me to be irrelevant in a constitutional discussion.

The wise man did not say there was a future time for everything; he allowed that the time for dancing might be altogether behind us, and a less pleasant exercise before us. We are hardly likely to acquire any territory that will not come at some cost.

That we give back to Porto Rico all of the revenue derived from the customs we levy, does not seem to me to soften our dealings with her people. Our fathers were not mollified by the suggestion that the tea and stamp taxes would be expended wholly for the benefit of the colonies. It is to say: We do not need this money; it is only levied to show that your country is no part of the United States, and that you are not citizens of the United States, save

at our pleasure. When tribute is levied and immediately returned as a benefaction, its only purpose is to declare and maintain a state of vassalage.

But I am not sure that the beet-sugar objection is not more tenable than another, and probably more controlling consideration, which ran in this wise: "We see no serious commercial disadvantages, and no threat of disorder, in accepting Porto Rico to be a part of the United States—in that case it seems to be our duty; but we have acquired other islands in the Orient, of large area, populated by a turbulent and rebellious people; and, if we do by the Porto Ricans what our sense of justice and of their friendliness prompts us to do, some illogical person will say that we must deal in the same way with the Philippines. And some other person will say that the free intercourse was not given by the law, but by the constitution."

I will not give a license to a friend to cut a tree upon my land to feed his winter fire, because my enemy may find in the license a support for his claim that the wood is a common!

If we have confidence that the constitution does not apply to the territories, surely we ought to use our absolute power there with a view to the circumstances attending each call for its exercise. Not to do this, shows a misgiving as to the power.

The questions raised by the Porto Rican legislation have been discussed chiefly from the standpoint of

the people of the territories; but there is another view. If, in its tariff legislation relative to merchandise imported into the territories and to merchandise passed from the territories into the state, congress is not subject to the law of uniformity prescribed by the constitution, it would seem to follow that it is within the power of congress to allow the admission to Porto Rico of all raw materials coming from other countries free of duty, and to admit to all ports of the "United States proper," free of duty, the products manufactured from these raw materials. As the people of the "United States proper" choose the congressmen, there may be no great alarm felt over this possibility; but it is worth while to note that a construction of the constitution adopted to save us from a competition with the territories on equal grounds, is capable of being turned against us and to their advantage.

The courts may not refuse to give to the explicit words of a law their natural meaning, because of the ill consequences that may follow; but they may well take account of consequences in construing doubtful phrases, and resolve the doubts so as to save the purpose of the law-makers, where, as in the case of the constitutional provision we are considering, that purpose is well known. They will not construe a doubtful phrase so as to allow the very thing that the law was intended to prevent.

These constitutional questions will soon be decided

by the supreme court. If the absolute power of congress is affirmed, we shall probably use the power with discrimination by "extending" the constitution to Porto Rico and by giving to its people a full territorial form of government, and such protection in their civil rights as an act of congress can give. If the court shall hold that the constitution, in the parts not in themselves inapplicable, covers all territory made a permanent part of our domain, from the moment of annexation and as a necessary part of the United States, then we will conform our legislation, with deep regret that we assumed a construction contrary to liberty, and with some serious embarrassments that might have been avoided.

There has been with many a mistaken apprehension that, if the constitution, of its own force, extends to Porto Rico and the Philippines, and gives American citizenship to their free civilized people, they become endowed with full political rights; that their consent is necessary to the validity and rightfulness of all civil administration. But no such deduction follows. The power of congress to legislate for the territories is full. That is, there is no legislative power elsewhere than in congress, but it is not absolute. The contention is that all the powers of congress are derived from the constitution—including the power to legislate for the territories—and that such legislation must necessarily, always

and everywhere, be subject to the limitations of the constitution.

When this rule is observed, the consent of the people of the territories is not necessary to the validity of the legislation. The new territory having become a part of the national domain, the people dwelling therein have no reserved legal right to sever that relation, or to set up therein a hostile government. The question whether the United States can take over or continue to hold and govern a territory whose people are hostile, is not a question of constitutional or international law, but of conscience and historical consistency.

Some one must determine when and how far the people of a territory, part of our national domain, can be entrusted with governing powers of a local nature, and when the broader powers of statehood shall be conferred. We have no right to judge the capacity for self-government of the people of another nation, or to make an alleged lack of that faculty an excuse for aggression; but we must judge of this matter for our territories. The interests to be affected by the decision are not all local; many of them are national.

These questions are to be judged liberally and with strong leanings to the side of popular liberty, but we can not give over the decision to the people who may at any particular time be settled in a

territory. We have, for the most part, in our history given promptly to the people of the territories a large measure of local government, and have, when the admission of a state was proposed, thought only of boundaries and population. But this was because our territories have been contiguous and chiefly populated from the states.

We are however, not only at liberty, but under a duty, to take account also of the quality and disposition of the people, and we have in one or two instances done so. The written constitution prescribes no rule for these cases. The question whether the United States shall hold conquered territory, or territory acquired by cession, without the consent of the people to be affected, is quite apart from the question whether, having acquired and incorporated such territory, we can govern it otherwise than under the limitations of the constitution.

The constitution may be aided in things doubtful by the declaration of independence. It may be assumed that the frame of civil government adopted was intended to harmonize with the declaration. It is the preamble of the constitution. It goes before the enacting clause and declares the purpose of the law; but the purpose so expressed is not the law unless it finds renewed expression after the enacting clause. We shall be plainly recreant to the spirit and purpose of the constitution, if we arbitrarily deny to the people of a territory as large a measure of popu-

lar government as their good disposition and intelligence will warrant. Necessarily, the judgment of this question, however, is with congress. The constitution prescribes no rule—could not do so—and the courts can not review the discretion of congress.

But we are now having it dinned into our ears that expansion is the law of life, and that expansion is not practicable if the constitution is to go with the flag. Lord Salisbury, some years ago, stated this supposed law of national life. In a recent address, Mr. James Bryce says, by way of comment:

"He thinks it like a bicycle, which must fall when it comes to a standstill. It is an awkward result of this doctrine that when there is no more room for expansion, and a time must come, perhaps soon, when there will be no more room, the empire will begin to decline."

If Great Britain, with her accepted methods of territorial growth, finds the problem of growth by expansion increasingly hard, it will be harder for us, for we are fettered by our traditions as to popular rights, at least—if not by our constitution.

But expansion is not necessarily of a healthy sort; it may be dropsical. If judgment is passed now, the attempted conquest of the Boer republics has not strengthened Great Britain. She has not gained esteem. She has not increased her loyal population. She has created a need for more outlying garrisons—already too numerous. She has strained her

military and financial resources, and has had a revelation of the need of larger armies and stronger coast-defenses at home. The recent appeal of Lord Salisbury at the lord mayor's banquet for more complete island defenses is more significant. Did the South African war furnish a truer measure of the empire's land strength than the familiar campaigning against half-savage peoples had done? The old coach, with its power to stand as well as to move, may after all be a safer carriage, for the hopes and interests of a great people, than the bicycle.

Some one will say, increasing years and retirement and introspection have broken your touch with practical affairs and left you out of sympathy with the glowing prospects of territorial expansion that now opens before us; that it has always been so; the Louisiana and the Alaskan purchases were opposed by some fearful souls. But I have been making no argument against expansion. The recent acquisitions from Spain must present widely different conditions from all previous acquisitions of territory, since it seems to be admitted that they can not be allowed to become a part of the United States without a loss that overbalances the gain; that we can only safely acquire them upon the condition that we can govern them without any constitutional restraint.

One who has retired from the service, but not from the love of his country, must be pardoned if he finds himself unable to rejoice in the acquisition of lands

and forests and mines and commerce, at the cost of the abandonment of the old American idea that a government of absolute powers is an intolerable thing, and, under the constitution of the United States, an impossible thing. The view of the constitution I have suggested will not limit the power of territorial expansion; but it will lead us to limit the use of that power to regions that may safely become a part of the United States, and to peoples whose American citizenship may be allowed. It has been said that the flash of Dewey's guns in Manila bay revealed to the American people a new mission. I like rather to think of them as revealing the same old mission that we read in the flash of Washington's guns at Yorktown.

God forbid that the day should ever come when, in the American mind, the thought of man as a "consumer" shall submerge the old American thought of man as a creature of God, endowed with "unalienable rights."

# MUSINGS ON CURRENT TOPICS

## First Paper

North American Review, February, 1901

It is a rare pleasure to make a good end of a long and strenuous effort; to put wholly out of the mind a subject that has filled every chamber of it for two years. Minds are lodging-houses. The lodgers are of all sorts—casuals and regulars, modest attic-dwellers who have no call bells, and first-floor boarders who rent a large space and fill a larger one. Now and then some pretentious and exacting fellow crowds out every other lodger and takes the house. There is not wanting a sense of the dignity the house borrows from this august guest; but emancipation abides his going. When the last truckload of his baggage has departed, and the door is barred against the spirits that have a penchant for garnished houses, what a glad sense of freedom the overworked mistress feels! Every room vacant, but nothing "to let." This will not do for a permanent state, but as a short experience it is ecstatic. I have known what it is to have an imperial tenant of the whole mind, and have experienced the joys of an ouster. The case of Venezuela, in the Anglo-Venezuelan arbitration,

demanded the unremitting labor of two years. What a sense of freedom came, when every book and paper connected with the case was put out of sight! I was again in fellowship with the undergraduates dancing over the grave of the calculus. The trouble with the calculus is that you must work out the problems, you must bring the answers. If you could stop when one problem gets hard and try another, as the squirrel does with his nuts, the undergraduate would regard the book differently. A *non sequitur* is a hateful thing. Answers must be right. But it is not, I hope, a sin against a sound mind to stop short of an answer; you do not need to climb to the top of every hill you see. To raise questions, to speculate, to balance such *pros* and *cons* as come easy, and to stop short of conclusions, is admissible —in vacation.

The notes that follow are largely exercises of that sort, made chiefly during the winter days when there were no tenants, and the sign "to let" was not in the window.

The electric, self-binding newspaper drops its sheaves at our feet with bewildering rapidity. The stackers must keep up; but a vagrant may take a sheaf for a pillow and lie down in the shade.

## THE 'ANTI-WAR PARTY

There is an anti-war party in Great Britain and another in the United States. A war seems to imply

an anti-war party. Indeed, the Gospels carry such an implication in a general sense. Both here and in Great Britain the anti-war party has been brought under fire of bitter invective. We, for the most part, decline to discuss with the anti-war man the justice of the war. That issue has been voted upon and carried, we say, and every one is bound, not only as to his actions, but as to his speech.

But is the morality of the motto, "My country, right or wrong," susceptible of defense? Is it not to say: "It is right to do wrong?"—for the sentiment implies action. But may it not be quite the right, and even the necessary, thing to say nothing "just now"? If my father is engaged in a wanton assault upon another man, and blows are being exchanged, I must in my heart condemn my father; but am I called upon to trip him, or to encourage his adversary by telling him his adversary is in the right? That would clearly be the duty of a bystander not of the blood of either combatant. But do I very much offend, or become *particeps*, if I withhold for the moment an expression of my disapprobation of my father's conduct? Or, on the other hand, can it be demanded as a filial duty that I cheer him on, and when his weapon fails give him another? Is it unfilial to say, "Father, you are in the wrong—stop"? I can not get him into a closet that I may say this in his ear. His antagonist will hear it. And, if I speak in the necessary hearing

of both, can my father retort, "If I am killed, you are my murderer; you have encouraged my adversary"? But, if the battle goes too hardly against him, must I not intervene and save his life? I can flagellate his spirit while I am binding his wounds. But if he is the victor, must I not bind the wounds of his adversary, and support his adversary's demand for compensation?

A country at war is very intolerant—the home guards more than the veterans, and the politicians most of all. When war is once flagrant, public sentiment—at least that part of it that finds expression—demands that every citizen shall be active in support of it. To speak against the war, to impugn its justice, is to encourage the enemy, is to be guilty of the death of such of your countrymen as afterward fall in action. The mob may not seek you, but you are a "suspect" to your neighbors. You will not be heard to offer such specious suggestions as that not you who opposed but those who brought on an unjust war are guilty of the blood of the brave fellows who are sent into action.

Indeed, you will not be heard at all, by this generation of your countrymen, unless disasters in war and money burdens open the way. Your magnanimity and sense of justice will be praised by the alien people in whose behalf your voice was raised. They may even build monuments in your honor, as we did to Pitt; but the home newspapers will, while

you live, make you wish you had never been born; and, when you are dead, they will now and then exhume your skeleton to frighten those who live after you. You must give your soul to torments and expatriate your fame. A sea will roll between your monument and your bones. But a monument is a community rather than a personal necessity. The free spirit of a just man does not need a perch.

"The gentleman tells us America is obstinate, America is almost in open rebellion. Sir, I rejoice that America has resisted! Three millions of people so dead to all the feelings of liberty as voluntarily to be slaves, would have been fit instruments to make slaves of all the rest."

For more than a century, American school-boys declaimed these words of Pitt. Virginia voted him a statue and New York set one up at Wall and William streets.

"Congress passed," says Frothingham, "a warm and grateful vote of thanks to the noble advocates of civil and religious liberty, in and out of Parliament, who had generously defended the cause of America."

In his proposed address to the king, in 1777, Burke said many like things, the nobility of which we have greatly applauded.

The utterances of these great Englishmen are very like in spirit to what Senator Hoar has recently said about the war in the Philippines. We do not

agree that the cases are parallel. We are persuaded that the Filipino and the American are unlike, and that Aguinaldo and George Washington have no points of resemblance. We have the capacity of self-government; we deny that capacity to the Filipinos. Mr. Hoar has failed, apparently, to see that the principle that government derives its just powers from the consent of the governed can not be invoked by a people incapable of self-government. In the interests of humanity, all people must be governed; and if they are incapable of governing themselves, does it not follow that some other nation must govern them? But it was not our purpose to bring into question Senator Hoar's conclusions, but to consider the measure of his guilt in giving expression to them as his honest convictions.

Pitt and Burke had not only great praise with us, but their repute in Great Britain is now the greater by reason of these utterances. The Mother Country has "come around."

Does it depend upon the outcome? If the war fails, do such utterances become noble and wise, and do they remain ignoble if the alleged aggressor is victorious? Is there no way to stop any war but to fight it out; or must the stopping of it always be left to the war party? In the popular judgment, generally yes; but in law and morals, how is it? The constitution of the United States very clearly saves the liberty of the citizen to say that a war is wrong.

The statue at William and Wall streets had not been forgotten.

It is not treason to say that a war is unjust. But if not noticeable by the law, such things may still be contrary to duty. Was there a duty upon Senator Hoar to keep silence? His motives were unimpeachably pure. All agree that he was not seeking the applause of his countrymen of this generation. All agree that he has the old New England conscience and the old American fervor for liberty and human rights. Possibly, he lacks the mercantile spirit. He may not give sufficient consideration to the metals and coal and forests of the Philippines.

But the question we are pondering is not were his views right, but did he offend against his country by giving expression to them? Now, it can not be wrong to proclaim the truth when a matter is in debate. Are we not compelled, therefore, to prove his views to be wrong, before passing final sentence upon him? The popular condemnation sure to be meted out to the men who oppose when war is flagrant is a mighty, repressive force. But if some one, for conscience' sake, assails the war as cruel and unjustifiable, must we not justify it? Is it enough to say, "You are prolonging it; you are sacrificing the brave fellows whom we have sent to the front"? There is a semblance of unreason in charging the man who is trying to stop a fight with the bruises and wounds that ensue upon the failure of his ef-

forts. To perfect the argument and fix his responsibility, must we not introduce this major premise?—The war is just and can not be stopped until the enemy has yielded.

Is there any other conclusion of the whole matter than this? A patriot may, if his conscience can not otherwise be quieted, oppose a war upon which his country has entered; but if he does so, he puts his fame in the keeping of a distant generation of his countrymen, or possibly of an alien people. What some other people have said makes it proper to say here, that we must not forget that the soldier who fights the war does not declare it. He must not denounce it, nor must any patriot denounce him. The appeal, silent or spoken, that comes from him to his fellow-countrymen, not to make the war longer or harder, reaches the heart. He is our countryman; he carries and keeps the flag. We must be tender, and careful that we do not spoil his *esprit de corps* by ingratitude, or dash his courage by a failure to applaud it, or wound him by imputing designs against his country's liberties.

An armed rebellion against the state must usually justify itself by something more than a schedule of wrongs—a chance, at least, of righting the wrongs. And is it not possible that this principle sometimes applies to rebellious consciences, and requires them to take the balance of good and evil?

Of course, there must be a time for denouncing

an unjust war; but does a troubled conscience have all seasons for its own, or only a time before the war begins and a time after it is over? The latter view is held by so many that it is not safe to assume that all who do not denounce a war approve it.

The almost unbroken record of disaster that has attended the anti-war parties should have the wholesome effect of discouraging a factious party opposition. We can get along with consciences; indeed, we can not get along without them, if the reign of the Prince of Peace is ever to be brought in. The emphasis should be put upon the facts that justify the war, rather than upon epithets.

## A "WORLD POWER"

The newspapers gave another turn to the vagrant questionings in which I was indulging myself, by their frequent references to the assumed fact that the United States has become a "World Power." We have been a power, as that term is used by the law writers and in conventions, for more than a century. We have been a power in a military sense on the land for many years, and by spells a naval power of renown. In a moral sense, we have long been familiar with the idea that we were the greatest of world powers. We have believed that we had found and illustrated a scheme of free, popular government that would in time stir the sympathy and

emulation of all nations and bring in everywhere republican governments.

Mr. Webster said: "We are placed at the head of the system of representative and popular governments." It is not in this familiar and sentimental sense, however, that we are now said to have become a world power. Indeed, those who most affect the term seem to be quite shy of that sense.

What is it, how did it come about, and what advantages and responsibilities accompany the new status? Great Britain and the great continental powers, with more or less cordiality, have admitted the fact. Did it not indeed have a European announcement? Did our war with Spain make us a world power, or reveal to us and to the world a pre-existing fact? As a revelation, it apparently came largely out of the naval fights at Manila and Santiago. It was not the charge at San Juan hill; for, in the way of land fighting, we had many times done greater things than that. Indeed, in the way of naval tactics and desperate courage, Paul Jones and Decatur and Perry and Farragut may be taken to have suggested long ago to observing naval critics that the United States had the capacity to be a sea power. Nothing has happened to make us forget these and other great naval captains. Their ships were chiefly wooden, and their guns smooth-bore muzzle-loaders; but they came close, their holds were often flooded and their decks slippery with blood. Our ships went

into a period of decay, but our navy personnel did not. We added some hasty scouting and cruising strength to our navy in the Spanish war, but only a little increased its fighting strength. It was not these additions to our naval strength that made us a world power. The naval fights of the Spanish war did not originate a naval prestige, but revived it—caused other powers to remember that, if we set about it, we could build unsurpassed warships and fight them unsurpassingly.

Relatively, we have been stronger as to war vessels than we are now—notably, at the close of the civil war. But there was no talk then of being a world power. We did not aspire to more than to be *the* American power—a half world power. So, after all, it could not have been our ships or our naval victories that made us a world power. Something must be added, and it would seem that the addition must have relation to some new use of our military strength. The old use was wholly defensive, though the campaign might be what military men call "offensive-defensive." Paul Jones had entered the British channels. Our guns had been heard in the Mediterranean. The "Alabama" was sunk off Cherbourg. But all these visits were casual, and all had relation solely to American rights and liberty and the freedom of the seas. So, too, the Spanish war had its origin in an American question. We assumed a police duty in Cuba, because it is an Amer-

ican island—because the cry of "murder" was on our beat. Succor was an American, not a world question. We did not assume a duty to police the world. We expressly disclaimed any hope of reward for our intervention. All this was quite out of the rôle of a world power. Indeed, it seemed too sentimentally fantastic to obtain the credence of the world powers. Some were incredulously sarcastic. Great Britain alone kindly made us think that she accepted our altruistic conceptions.

The world powers have been those who allowed no geographical limitations—that is, none appertaining to terrestrial geography. The appropriation of the stars must, of course, await the air-ship. We only, among the strong nations, have lived under self-imposed limitations, of two sorts—one that had to do with geography and another that had to do with public morality. We have said: "We do not want, in any event, territorial possessions that have no direct relation to the body of our national domain, and we do not want any territory anywhere that is acquired by criminal aggression." And as to the doctrine of "spheres of influence"—the modern euphemistic rendering of territorial pocket-picking—we have denied its application to this hemisphere and denied to ourselves the use of it anywhere. "We will not—and the European governments had, on the whole, better not—interfere with the autonomy and independence of any American state," is our rendering.

We claimed no commercial advantages, save such as fair reciprocal trade treaties might give to us. In all European cabinet entanglements, we were quiescent. The apportionment of Africa, and the "rectification" of Asiatic boundaries by the division of lands that belonged to neither disputant excited American notice of an unofficial sort only. Our touch with the other great powers was at two points only: first, in the pleasant exchanges of good will, and, second, in the watchful care that neither our commerce nor our people were unjustly discriminated against. The great value of our markets and our great food surplus strongly supported our demands for equal trade advantages, and our increasing military strength emphasized the value of a friendship unaffected by inherited animosities and free from entangling alliances. Our position was, of all the nations, the safest and most hopeful. Does the supposed new status imply a change of position or policy?

If the world powers have any recognized creed, it is that it is their duty as "trustees for humanity" to take over the territories of all the weak and decaying nations, having regard among themselves to the doctrine of "equivalents." Have we become a world power by an initiation into this *bund?* The only reason for the continued independent existence of a weak nation, in the judgment of the world powers, is found in the difficulty sometimes experienced in

applying or disregarding, in its case, this doctrine of "equivalents." A world power seems, therefore, to be a power having the purpose to take over so much of the world as it can by any means possess, and having with this appetite for dominion military strength enough to compel other nations having the same appetite to allow or divide the spoils. A veiled expression of the same definition is found in the terms "colonizing nations." There has been an attempt to associate the United States with this program of civilization, upon the theory that the "Anglo-Saxon" has a divine concession that covers the earth. This appeal to a divine decree is itself a concession to the Anglo-Saxon common-law rule, that the plaintiff in ejectment must show title.

The argument runs thus: "The earth is the Lord's and the fullness thereof." So much is of record. The next step is more difficult, for there is no prophet, no sealed transfer, no mention by name of the Anglo-Saxon. "The meek shall inherit the earth"—but the boldest advocate of expansion dare not suggest, as the minor premise, that John Bull and Uncle Sam are of that class. That Scripture seems to lead away from *them*. We must get away from all texts, I fear. Perhaps this is the best that can be done—certainly it is the best that has been done—Major premise: God's purpose is that men shall make a full and the best use of all His gifts. Minor premise: Dominion is one of His gifts, and the Anglo-Saxon makes a

better use of dominion than the Latin, or the Boers, or the Chinese. Conclusion: The Anglo-Saxon, therefore, executes a divine purpose when he subdues these peoples and takes over their lands.

Is not this program logically perfect and commercially profitable? The man who buries his talent must go into darkness. We are a little hampered in the proposed association with Great Britain in this program of regeneration, by reason of the fact that our declaration of independence was writ too broad. The Briton has very carefully limited his charters of liberty to a declaration of his own rights, while we have unfortunately written into ours "all men." There is also a practical difficulty that must be thought of. We are late in getting into the business. The vacant lands—the lands occupied only by savages—have been taken up. The business seems now to promise responsibility and outlay rather than profits. The melon-patch has been spoliated, and the melon cut and divided. A new boy comes upon the company in the wooded hollow and is invited to take one of the ends of the melon. There is a very small show of red meat, and even that is very difficult of appropriation. If he is a wise boy, he will go his way—even though he has no scruples about robbing melon patches. The effusive cordiality of the invitation to make himself one of the party, will not make him forget the disproportion between the risks and the red meat.

If the United States now enters upon a scheme of colonization, it must plunge in—put away all scruples; there is no time to linger shivering on the brink. The frame of our government is excellent; there are some weak states that would be bettered by accepting our domination; and seeing that they are so ignorant as not to see the advantages of accepting it, is it not our duty to compel them? Can we innocently stand by and see nations distracted—property insecure, resources unused? Very many good people—some ministers of the gospel of peace—have been saying that they hoped Great Britain would succeed in taking over the Transvaal and the Orange Free State, because "Christian civilization" would be advanced by "British paramountcy" in South Africa. Old-fashioned moralists were in the habit of scouting the maxim, "The end justifies the means." The imputation of this maxim to a noted religious order, as a rule of action, had much to do with the general odium in which that order was once held.

The peace of the world has been thought heretofore to depend upon the allowance of the doctrine that men and civilized nations have, as to other men and nations, the right to do something less than the best with their possessions, and to judge in large part for themselves what is best.

This view does not, of course, exclude the right, in the last resort, of other nations to intervene for the saving of a population from destruction by the bar-

barous use of the civil authority. There are exceptional cases when remonstrance, and even armed force, may be justified; but, in such cases, the delivering nation must follow the rôle taken to the end.

Individual and national independence implies the exclusive right to determine some things. Persuasion and remonstrance, even, have their limits, passing which they become impertinence. "It is none of your business," may lack some of the elements of polite discourse, but there are times when it ought to be said. The "up-stream" wolf, as Mr. Hoar calls him, in the old fable, has suffered great obloquy because he felt compelled to put his intervention upon the untenable ground that he was injured by the soiling of the waters. He lived, unfortunately, in a day when men and beasts felt compelled to show that what they meddled in was proper concern of theirs. It was a narrow view. He should have said: "True, the muddy water does not come to my lips, but your habit of drinking it is bad; you are not neat; and besides you hold yourself aloof, and refuse to admit my children to the sheepfold."

What has hitherto saved the United States in great measure from the land lust and made her respect the independence and territorial autonomy of her weak neighbors? Was it that we did not until now feel the need of more territory; or was it a conservative timidity; or is there an American conscience that reprobates aggression and rejects the new doctrine,

that the right of weak states to govern themselves rests not upon the consent of their own people, but upon the consent of the nearest world power?

The Monroe doctrine has been understood to disclaim for ourselves what it denies to the powers of Europe. The declaration of Mr. Monroe was, Mr. Jefferson said, "our protest against the atrocious violations of the rights of nations by the interference of any one in the internal affairs of another." It seems to have been always the way of this statesman to generalize. This accounts for the presence, in the declaration of independence, of philosophical maxims that now threaten embarrassment to our progress as a world power. We must differentiate ourselves. We must proceed upon the theory that our standards are right, and our civil organization and social customs most promotive of the glory of God and the happiness of man. The "pursuit of happiness" may be an "unalienable" human right, but does it follow that another nation is free to be happy in its own way if we know a better way?

This propaganda of Anglo-Saxon supremacy does not seem to fall in with the program of The Hague Peace Conference; and we can hardly hope to organize an international court that will allow the doctrine. On the whole, then, might it not be better to withdraw this program of Anglo-Saxon paramountcy? The nation that goes out to slay and to possess in God's name must give some other attesta-

tion of its mission than the facts that it is the mightiest of the nations and has an adaptable language.

The men upon whom the tower in Siloam fell were not sinners above all men in Jerusalem; and the philosophy of the islanders among whom Paul fell—that serpents always bite the worst man in the company—was very quickly upset. Is it not possible that the philosophy of those who assign God's special approbation to the prosperous and the powerful may be quite as faulty?

His intervention is more apparent when weak things confound the mighty. It is not safe to conclude that righteousness and the heaviest battalions are necessarily disassociated, but the tendency is that way.

Now, it happens that all of the Central and South American states are weak states. There is not a harbor so defended as to bar the entrance of a squadron of modern battle ships. No one of them has a navy that could offer the briefest resistance on the sea to any one of the great European powers. Practically, if each stood alone, its subjection by any one of the great powers would be quite within the possibilities of a great military effort. If the cabinets of the four great powers of Europe were to combine in a propaganda of colonization in this hemisphere, as they did in Africa—using the new doctrine of "equivalents"—the Spanish American states, south of Mexico, would, unless the United

States gave its powerful aid, inevitably pass under European control. The Central and South American states have retained their autonomy only because the United States would neither herself infringe that autonomy nor allow other nations to do so. But for this, British Honduras might ere this have embraced the whole isthmus, British Guiana have included the Orinoco and Mexico have been subjected to the rule of a foreign king.

What hinders that the small states of Europe are not taken over by one of the great powers? Is it any sense of the inherent right of these lands to a separate national existence or of their princes to their crowns? Such sentimental considerations would offer no more serious obstacles than the glistening spider webs in the grass offer to the feet of their marching legions.

These small states stand, out of deference to the European equilibrium. They can not be shifted on the lever as units without destroying the balance, and Great Britain is not so situated as to make use of continental territorial fractions. Her "walls of oak" would not be available for their defense.

What a grim commentary all this is upon our boasted Christian civilization, upon that plaything of the diplomatists and the tribunals, international law, and upon peace conferences! The sheep have their security, not in the shepherd or in the fold, but in the watchful jealousy of the wolves.

The fundamental principle of international law is the parity of nations. Arbitration is the special resource of the weak; but it was not available to the Dutch South African republics and was only available to Venezuela because of the intervention of the United States.

It is of the highest consequence to us, and to all of the Central and South American nations, that it should be known to them and to the world that the United States will continue faithfully and unswervingly to respect the autonomy of those states; that we will neither ourselves dismember them nor suffer them to be dismembered by any European power. If the Spanish war, or this talk of ruling the tropics from the temperate zones, or of Anglo-Saxon alliance and paramountcy, has bred any distrust of our purposes toward them, it should be speedily dispelled. The supposed transformation, from an American power to a world power, in the sense I have described, is not to be imputed to us. Whatever may be in the minds of gaudy rhetoricians, we have not as a nation entered upon a program of colonization, or of subjugation, or spoliation. We have not joined the wolves. We have still some of the care-taking instinct of the shepherd; still, at least, a latent capacity for sorrow when the word "free" is eliminated from the name of a state.

A merchant of my acquaintance said to a sentimental friend, who was troubled over the proposi-

tion that the declaration of independence and the bill of rights sections of the constitution had no relation to Porto Ricans, but applied only to those who dwelt upon the mainland: "The people care nothing about those things; it is money, commerce, that interests them." That is a low view of the popular thought.

We had in 1776 a generation of Americans that placed a higher value upon these sentimental things, and pledged to them their "lives, their fortunes and their sacred honor." The integrity of the Union was of more value to the men of 1861 than all lands and all lives.

If to be a world power is to do as the world powers do, then we must disclaim this new degree which the European College of Applied Force has conferred upon us. The taking over of the Philippines has been declared, by those who should know, to have been casual—of necessity—the acceptance of a divinely imposed duty. The question of the disposition of them, when their people shall have submitted to legal authority, is said to be still open. All of which is to say that the acquisition of these distant islands does not commit the nation to a scheme of colonization. The United States seems thus far in China to have stood firmly against dismemberment; not because of the practical difficulties of allotting the parts, but out of regard to the rights of the Chinese to preserve their national autonomy. But we are hearing now a great deal of the riches and the stra-

tegical advantages which have come to us with the docile acceptance of the divine will in the Philippines, and a great deal of irresponsible nonsense about our being a world power. If we allow ourselves to drift into bad ways, it is quite the same as if we had sought them.

The barbarous conduct of some of the allied forces in China, the shameless looting of private houses and public institutions, and the contemptuous and cruel disregard of all the sensibilities and rights of alien races which characterize the world powers, shock our sensibilities. We have almost more pride in General Chaffee's blunt letter of protest against looting and cruelty than in his splendid fighting. Let us not be a world power, in any save the good old sense—that of a nation capable of protecting in all seas the just rights of its citizens, and incapable everywhere of a wanton infringement of the autonomy of other nations.

# MUSINGS ON CURRENT TOPICS

## Second Paper

North American Review, March, 1901

### THE BRITISH ALLIANCE

The newspapers, British and American, were much occupied during last winter with a supposed, or proposed, Anglo-American alliance, more or less formal in character. We know that no such convention was signed, and no evidence has been produced to show that the subject was even informally discussed by the representatives of the respective nations. Mr. Chamberlain was premature and incautious in giving out what seemed to be an announcement.

Every one must admit that a close friendship between the United States and Great Britain is quite desirable, and quite in the course of nature. However complex our population may be in the matter of origin, if we have any derived national type it is English. This predisposition to friendship, however, is not because of birth-ties felt by our genera-

tion. These tend, perhaps, more strongly in other directions. English nativity, as a direct influence in American life, is now comparatively small. But, as a remote and indirect influence, it has been the preponderating element in the evolution of the American. The thirteen colonies were English colonies, not only in their governmental relations, but in fact. The Scot and the Irishman and the Welshman, for the most part, made their salutations to the new world in the English tongue. They came as English-speaking people. Their accent was, at home, only an unavailing protest against absorption. The accent fell away here; it was not needed. A more effective protest against English political domination was found. As free Americans, they had no quarrel with the English tongue. Whatever has come since to the United States has been grafted upon the old English root. The fruit has, we think, been improved, but the *genus* is still that of the old root.

The Scot, the Irishman, the Welshman, the German, the Frenchman, the Hollander, the Dane, the Swede, the Norwegian, has each brought a contribution, and the Italian is now offering one. The American is a give-and-take product. But "thy speech bewrayeth thee"—and our speech is wholly, and our derived institutions are chiefly, English. We have pride in the great poets, philosophers, jurists, historians and story-writers who have used the tongue

we use, and we are grateful to them. It is a personal debt.

We have fellowship with the stout Britons who sheared the prerogatives of the king, and with the martyrs who died for freedom of worship. We are grateful to *them,* not to the government that persecuted them. But is it logical to derive from such considerations the deduction that our sympathies must be given to every British ministry that inaugurates a war, without reference to its origin or its justice? We did not take English literature or English law by voluntary conveyance, upon a consideration of love and affection. Will not the argument for a friendly spirit toward Great Britain be stronger, if the plea of gratitude is made less of? For gratitude takes account, not of one incident, but of all; and the average between 1774 and 1898 had better not be struck. There may be found more things that it would be pleasant to forget than to remember!

Prior to the Spanish-American war, can the historian find, in British-American diplomatic intercourse, an instance where friendship for the United States led to any substantial abatement of British pretensions, or to a sympathetic attitude toward us in the times of our stress and agony, or even to the use of any special consideration in presenting a demand for redress? The demand for the release of Mason and Slidell was couched in very harsh and peremptory terms. And it is understood that, but

for the kindly intervention of the queen, an abasement would have been put upon us that we could only have accepted with a time reservation—until our fleets and armies had finished the work in hand.

The attitude of the British government toward us during our civil war was hostile and hurtful. Its unfriendliness only stopped short of an open alliance with the Southern Confederacy. Neither kinship nor a history of ostentatious reprobation of slavery was enough to overbalance the commercial advantage to be derived from trade with a non-manufacturing, cotton-raising nation. The threatening attitude of Great Britain was no small part of the breaking burden that weighted the shoulders of Abraham Lincoln. Only the Lancashire spinners—God bless them to the latest generation!—showed an embodied friendship; though there were notable sporadic cases.

Is it quite logical to use the recent display of friendliness by Great Britain as a sponge with which to wipe from the tablets of memory the decisive intervention of France during the revolution, and the helpful friendliness of Russia during the civil war? Or should the sponge only be used to efface any rancorous memory of old manifestations of unfriendliness by Great Britain toward us, or by us toward her, and to give us a clean slate upon which may be recorded an unbroken future of kindliness and good will?

Washington did not allow gratitude to France, for an armed and saving intervention in our behalf, to be used as the basis of an alliance that would bring us into European entanglements; and can we now allow the friendly non-intervention of Great Britain during the Spanish war—which involved no cost to her—to be so used? The French demands upon our gratitude were thought to be excessive, though they did not insist upon a permanent naval base in New York harbor!

Are not the continuous good and close relations of the two great English-speaking nations—for which I pray—rather imperilled than promoted by this foolish talk of gratitude and of an alliance, which is often made to take on the appearance of a threat, or at least a prophecy, of an Anglo-Saxon "paramountcy?"

The prophetic rôle, also, is being overworked. There is no emotion so susceptible to overwork as gratitude, and no rôle so silly as that of a prophet without an attestation. Is it not wholly illogical to argue that, because the British ministry, and, to a considerable degree, the British people, gave their sympathy to us during the Spanish war, an American administration and the American people must give their sympathy to the British in the Boer war? The major premise is wanting—namely, that the two wars are of the same quality. The argument we hear so much takes no account of this element; yet it is necessary, to save the deduction, that both wars

should be just or that both should be unjust. There are evidences, however, that this reasoning is accepted by many intelligent persons. I say "reasoning." Perhaps that is not a good word. It certainly is not unless we start with this major premise—"Both wars were righteous wars;" or this—"Both wars were aggressive, for dominion." If our Spanish war was waged to liberate an oppressed people, and the British-Boer war is waged to subjugate a free people, does not the "reasoning" fail? For, to say that we must stand by Great Britain in the wrong because she stood by us in the right is not reasoning—it is the *camaraderie* of brigands. It must be admitted, however, that, should we present a claim of "suzerainty" or "paramountcy" over Cuba, a similitude to the South African situation might be found.

Is not the sympathy of Great Britain robbed of all moral quality, if we allow that it had its origin in any other consideration than a belief in the justice of our cause? It is to disparage the nation whose virtues and civilization we affect to honor, to say that Great Britain stood by us in a war that her conscience did not approve; that she kept off the police, while we effected a robbery. And the depths of moral darkness are sounded when it is suggested that we are to make return in kind.

Does not a flood of gush and unreason rather thwart than promote a good understanding? There will be an ebb. Neither the British people nor the

American people will surrender their right of free judgment and criticism of the acts of their own government, much less of the acts and policies of the other. Surely, every American speaker and writer is not now *perforce* either a supporter of Mr. Chamberlain's aggressive colonial policies, or an ingrate. Our freedom of judgment and criticism is surely not smaller than that of a Liberal member of Parliament. Government in Great Britain, even more than in the United States, is by party, and the control shifts. Is it not too hard a test of friendliness to say that each must shift its sympathies when the majority in the other shifts?

A *quid pro quo* friendship between nations had some promise of permanency, and some value, in the days when kings were rulers and there was an anointed line. But, in these days, must not an international friendship, to have value, unite two peoples? Ministries and presidents are shifting quantities. A friendship that comes in with a ministry or a president may go out with it or him. Only a union of the two peoples is worthy of a statesman's thought; and not incidents of friendliness, but an agreement in matters of principle, in general governmental purposes, is needed for that.

We take our friends on the average, as they must take us. If the liberty to differ is not reserved, I am not a friend, but a toady. A man who is capable of a high friendship will not mention the favor he

did you last week, when he solicits your help. Lending to those from whom you expect to receive as much again, is not friendship, but commerce. If friendship is put upon that basis, it becomes open to bids; and account must be taken of the extremity when aid was given or withheld.

I think the great weight of opinion among the English Liberals was that the war with the Dutch republics could have been, and ought to have been, avoided. Many of them believe that this war is only a supplement of the Jameson raid. Surely an American may hold these opinions without subjecting himself to the charge that he is a hater of Great Britain. Nor can the repression which the British Liberals have imposed upon themselves, pending the war, be exacted of Americans. Nations can only be reached by process from two tribunals—war and public opinion. The arbitral tribunal has no process; it assembles upon a stipulation. The tribunal of public opinion, on the other hand, is always in session, and must give a judgment upon all acts of men and nations that affect the public welfare. It would aid the tribunal greatly if each of the combatants could be compelled to plead, to declare the cause of the war and its objects.

The continental congress of 1776 allowed the jurisdiction of this great court. "A decent respect," it said, "for the opinions of mankind requires that they should declare the causes which impel them to the

separation." The object of the war was stated with equal explicitness: "That these United Colonies are and of right ought to be free and independent states."

In our second war with Great Britain, the messages of President Madison and the resolutions of congress distinctly catalogue the causes of the war and disclose its objects, and in our civil war the issue was so clear that neither malice nor sophistry has been able to confuse it. Mr. Lincoln consciously and willingly submitted the cause to "the considerate judgment of mankind."

In the recent Spanish war, congress declared not only the cause of the war, but put the United States under bond to conduct and conclude it as a war for the liberation of Cuba.

There is no influence for peace so strong (would it were freer and stronger!) as the fear of the enlightened judgment of mankind. And this must put those who influence that judgment upon the exercise of a judicial independence and impartiality. These judgments must not be made matters of exchange. Is it not bad morals, as well as illogical, to say: "We were recently at the bar of public opinion, and Great Britain, as one of the judges, stood by us; now she is at the bar, and we must stand by her"?

There are no two countries in the world where thought and conscience and speech, the elements and the organ of a sound public opinion, are so free or

so powerful as in Great Britain and the United States. And no friendship between the nations, that does not take account of and allow these, is a worthy one, or can have endurance. In the case of one's own country, there has been opportunity to influence public policies, and if they have gone wrong there will be an opportunity to set them right; while, in the case of another nation, we are without opportunity.

Is not the inevitable tendency of any attempt to put Great Britain and the United States in the relation of allies, to raise up and to strengthen an anti-British party in the United States and an anti-American party in Great Britain? Buried injuries and grudges are dug up and exploited for a domestic party advantage. There are forces that become destructive if they are pent; and, in this regard, opinions and gunpowder are in the same class. If a friendship between Great Britain and the United States, that will make their immediate relations cordial and unite their influence for peace and human progress, is to be maintained—to become a status—must it not be laid down on a moral instead of a commercial basis? Morals abide; commercial interests shift. It must not involve enmity to the world, or exact an approval by the one of every public act of the other. It must not be put upon grounds too tenuously sentimental, nor must the *quid pro quo* argument be too much pressed. It must be of a sort

that tolerates differences of opinions and endures the smart of criticism. The newspapers must not be taken too seriously. The friendship must not be of a party here with a party there. Upon that basis we shall have racking alternations of gush and coldness.

If the nations are to be friends, if they are to live together in amity and work together in their foreign policies, must it not be upon a basis that does not repel but invites the participation of all other nations in every project for the development and peace of the world—and not upon the pernicious and futile project of an Anglo-Saxon world? The moral quality of public acts must be taken account of; greed of territory and thoughts of political paramountcies enforced by the sword must be eliminated.

Great Britain has pursued aggressively a policy of territorial expansion, in which the consent of the peoples taken over has not been taken account of, as having any application, until after British sovereignty was established. If the Dutch will forego all thoughts of a lost republic and become loyal subjects of Great Britain, she will give back to them a pretty large liberty in local affairs, and take a very large credit for her generosity. She has not regarded the forcible annexation of territory as at all culpable.

Is the friendly co-operation of the two nations to be rested upon the abandonment or modification of her traditional policy, or upon the abandonment of

ours? In the prosecution of the "open door" policy —that is, equal commercial privileges to all nations —we have, perhaps, found a common basis of diplomatic action. To us this means, I still think, the recognition of the autonomy of weak nations and their right to regulate their own internal affairs, as opposed to dismemberment or the paramountcy of one of the great powers. Does Great Britain accept the "open door" policy in that sense? And is it with her a world or only a Chinese policy? Are we agreed that the seizure or dismemberment of a weak state by a stronger is wrong, or only that, in the case of China, an agreed partition would be difficult, or that it might be less advantageous?

Is it not possible that, if suitably urged, Great Britain might come to stand with us against the forcible absorption of weak states and for open doors everywhere? She has lost her monopoly of expansion. She has found that her most loyal colonies buy in the best market. The people of the Transvaal and of the Orange Free State will not show favor to a British trade-mark. The increased cost and competition in the business of expansion are suggestive.

The American people gave generously of their love to Queen Victoria. Her death was felt here to be a family sorrow. She was not associated in the American mind with those aggressive features of the British character and foreign policy that other

nations have so much resented. The American love for her as a queen was largely based upon the belief that her influence was used, as far as it might be, to ameliorate aggression and to promote peace. The qualities we most admired in her were those in which she was most unlike some British statesmen, whose names my readers are left to catalogue. The universal sorrow and sympathy which the death of the queen evoked in this country have largely confounded and silenced those who have been saying that America hated Great Britain. It is not so. But will it not be wise to allow the friendship between the nations to rest upon deep and permanent things, and to allow dissent and criticism as to transient things? Irritations of the cuticle must not be confounded with heart failure.

## THE BOER WAR

It is quite possible that the government of a state may so flagrantly abuse its internal powers, may so cruelly treat its subjects, or a class of them, that the intervention of other states will be justified. It is an extreme case that will justify an armed intervention, and the intervention must always be benevolent, both in spirit and purpose. The police must not appropriate the property they recover from the highwayman. The judgment whether the case is one that justifies intervention must not be influenced, or seem to be influenced, by motives of advantage. If

the land delivered is taken over, those who reject altogether the idea of an international benevolence or altruism will have another citation.

The insistence of many individuals and of a very large section of the newspaper press that, as matter of "reciprocity," we must give our sympathy to Great Britain in the Boer war, and the frequent references to certain crude and illiberal things in the Dutch administration of the Transvaal as matters justifying an armed intervention by Great Britain, have very naturally turned my vagrant thoughts to the consideration of the question, whether these alleged faults in the internal administration of the Boers furnished a justification for the war made by Great Britain upon the Boers. I put it that way, though I am not ignorant of the fact that the official view in Great Britain is that the Boers began the war, and that this view is adopted by the "reciprocity" school of Americans. Is it not possible, however, that the Texas view of the matter is more nearly the right one? In Texas, when one of the parties to an acrimonious, oral discussion announces that the discussion is ended and that he will now take such measures as seem to him to be more effective, and accompanies this declaration by a movement of his right hand in the direction of his hip pocket, *he* is accounted to have begun the war. If the other gets out his weapon first and kills the gentleman whose hand is

moving toward his hip pocket, it is, not only in the popular judgment, but in law, self-defense.

The Boers did not seek war with Great Britain. They retreated to the wall. Like the Pilgrims of Plymouth Rock, they did not seek, in the great trek of 1835, an Eldorado, but barrenness and remoteness—a region which, as Mr. Prentiss said, "would hold out no temptation to cupidity, no inducement to persecution."

The Pilgrims found, but the Boers missed, their quest. What seemed a barren veldt, on which freemen might live unmolested, was but the lid of a vast treasure-box. Riches are the destruction of the weak. "When a strong man armed keepeth his palace, his goods are in peace." But strong is in the positive; and this scripture tells us what happens when a stronger shall "come upon him."

Taking the case there, however, as one of British armed intervention for the correction of certain alleged evils and oppressions of Transvaal internal administration, what has international law to say about it? But is there an international law? The nations have never subscribed any codification. There are commentators, but there is no statute book. There are conventions between two or more states, which, in a few specified particulars, regulate rights and conduct. There are the moral law, the decalogue, the law of nature; but does the "thou" of these address itself

to states? There are precedents, but is the nation that made them bound by them, if her interest has shifted? Does the admiral of the strongest fleet write the law of the sea, not only for his antagonist, but for all neutrals? Is there a standard of personal cleanliness and domestic sanitation that is determinative of the right of self-government? Has a strong power the right to appoint itself a "trustee for humanity," and in that character to take over the lands of such weak nations as fail to make the best use of them? Is the rule that the trustee can not take a profit inapplicable to "trustees for humanity"? Does a well-grounded fear that another nation is about to appropriate territory to which neither it nor we have any rightful claim, justify us in grabbing it first, or in making an equivalent seizure in some other part of the world? Have we come, in practice, to the view which Phillimore puts into the mouth of those who say there is no international law:

"The proposition that in their mutual intercourse states are bound to recognize the eternal obligations of justice, apart from considerations of immediate expediency, they deem stupid and ridiculous pedantry. They point triumphantly to the instances in which the law has been broken, in which might has been substituted for right, and ask if providence is not always on the side of the strongest battalions. Let our strength, they say, be the law of justice, for that which is feeble is found to be nothing worth."

That choleric Virginia statesman, John Randolph, in 1800, when the subject of Great Britain's infractions of our neutral rights upon the sea was under discussion, gave voice to the same thought. "What is national law," he said, "but national power guided by national interest?" And a recent Chinese writer says: "International law is a set of precepts laid down by strong powers to be enforced on weak ones."

Many questions relating to natural rights are now regarded as outside the domain of practical statesmanship. Has the American view changed? When we were feeble, questions that are now rather sneeringly called "academic" were very practical, and the aspirations and sympathies that are now called "sentimental" were the breath of American life. Our diplomacy was sentimental; it had a regard for weakness, for we had not forgotten our own. Never did we fail to let it be known that our people sympathized with every effort, every aspiration, of any civilized people to set up or to defend republican institutions.

The British intervention in South Africa was not a response to any appeal from so much as a fragment of the Boer people. They were not only content with the government they had instituted, but passionately devoted to it—with a readiness to die in its defense that took no account of age or sex. No Boer in the Transvaal desired to become a British subject; but very many British subjects in the Cape

Colony were so unappreciative of the advantages of their condition as such that they passionately desired to throw it off for a citizenship in a Dutch republic. In other words, the men who were discontented and rebellious were not the citizens of the Transvaal or of the Orange Free State, but those men of Dutch descent whose grandfathers had by conquest become British subjects.

The political conditions in Cuba, when we intervened, were the very opposite of those in the Transvaal. Our intervention was in behalf of the Cubans. We co-operated to free them from the power of a government whose oppressions and cruelties had many times before driven them into rebellion.

Great Britain's intervention in South Africa was against a united people, living in content—an ignorant content, if you please—under a government of their own construction; and the ground of the intervention was ostensibly the interests of British subjects sojourning there.

Many defects, incongruities and crudities in the Boer government and administration have been pointed out by the newspapers and other writers of Great Britain, and these have been faithfully echoed by not a few Americans, and by not a few American newspapers. Now, these faults in Boer administration, in the main, were such as affected only the Boers themselves, and were not infractions of the international rights of aliens. The use made of them

was not, openly, as a justification of the war, but rather as a check upon the sympathy of the American people, which, it was feared, might, as it has been in the habit of doing, go over-strongly to the side of a republic fighting for its existence. It was to say: "Don't make too much fuss over the death of the man, or too strict an inquiry into the cause of the quarrel; he was not in all respects an exemplary citizen." The Boers were said to have been favorable to slavery as an institution, and to bear a grudge against the British because they abolished it. Now, the American, whose country, until very recently, was the great slave-holding nation of the world, and the Briton, who gave his sympathy, and much material help besides, to the states that sought by the destruction of the American Union to make slavery perpetual—surely these can not be expected to respect the autonomy or mourn the demise of a republic that is suspected of having had in the past a desire to hold slaves!

These Boers are not our kind of people; they are not polished; they neglect the bath; they are rude and primitive; their government is patriarchal and, in some things, arbitrary. To be sure, they like these habits and these institutions; they abandoned old homes, and made new homes in the wilderness, that they might enjoy them; but the homes are not such as we should have made; the Anglo-Saxon model has not been nicely followed. You have the "consent of

the governed"—yes; but Great Britain does not approve of you, and she stood by us in the Spanish war.

That any self-respecting government, which was strong enough to make its diplomatic notes express its true emotions, would have answered Great Britain's complaints by a flat refusal to discuss them, on the ground that they related to matters of internal administration; that such would have been the answer of the United States, if we had stood in the place of the Transvaal republic, can not be doubted—and there is no more room for doubt that the answer would have terminated the discussion.

If the subject of naturalization is not a matter to be determined by a nation for itself, and solely upon a consideration of its own interests and safety, there is no subject that is free from the meddlesome intervention of other states.

And as to the government monopoly of the dynamite trade, the practice of European governments has certainly placed that question in the schedule of internal affairs, resting, in the judgment of each nation, upon a view of its own interests, unless it has by treaty limited its control of the matter.

The idea of a war waged to enforce, as an international right, the privilege of British subjects to renounce their allegiance to the queen, and to assume a condition in which they might be obliged to take up arms against her, would be a taking theme for a

comic opera. And the interest and amusement would be greatly promoted if the composer should, in the opening act, introduce the "Ruler of the Queen's Navy" overhauling an American merchantman in 1812, and dragging from her decks men who *had* renounced their allegiance to Great Britain to become American citizens, to man the guns of British warships!

"If he produced naturalization papers," says McMaster, "from the country under whose flag he sailed, he was told that England did not admit the right of expatriation."

But, in those days, the "renunciation" was sincere and final. The men who made it meant it—meant to fight the king of Great Britain, if war came. Did these Transvaal Britons, who were seeking Boer naturalization, mean that? Did Mr. Chamberlain suppose that he was turning over to Mr. Krüger a body of Englishmen skilled in engineering and the use of explosives, upon whose loyalty to the Boer cause Mr. Krüger could rely? The climax of the fun will be reached when the opera composer offers this situation. Most of these men whose naturalization was to be forced upon the Boers were actively and aggressively hostile to the Boer government. No safe occasion to show this hostility was missed.

In a recent book, Mrs. Lionel Phillips, the wife of one of the Englishmen condemned to death for their connection with the Jameson raid, tells of an

incident that occurred at Pretoria before the raid. A British Commissioner, Sir Henry Loch, came to Pretoria to discuss with President Krüger some British grievances. Mr. Krüger drove in his carriage to receive the Commissioner and take him to his hotel. Mrs. Phillips says:

"There was a scene of the wildest enthusiasm, thousands being there to welcome the queen's representative, and when he and Krüger got into the carriage (which also contained Dr. Leyds) to proceed to the hotel, some Englishmen took out the horses and dragged it, one irresponsible person jumping on the box-seat and waving a Union Jack over Krüger's head! When the carriage arrived at its destination, Sir Henry, accompanied by Dr. Leyds, entered the hotel, and the president was left sitting in the horseless carriage. The yelling crowd refused to drag the vehicle, and, after some difficulty, a few of his faithful burghers were got together to drag the irate president to his home."

Now, it was for these thousands of Englishmen, who practiced this dastardly indignity upon President Krüger, and who, with others, a little later made or promoted the Jameson raid, that Boer naturalization was demanded.

But it has been stated, upon apparently excellent authority, that the British Commission expressly rejected a form of naturalization oath that contained, as our form does, a renunciation of allegiance to all

other governments. If, upon the basis of a retained British allegiance, suffrage, whether in local or general affairs, was demanded for the Outlanders, the comic aspect of the situation disappears; the unreason is too great for comedy.

Great Britain can not, we are told, safely give local government to the Boers when she shall have subjugated them, because she can not trust their loyalty to the crown; but she is seeking to destroy the republics, because the Transvaal refused suffrage and local control to Englishmen who had attempted by arms to overthrow the Boer government, and who sought suffrage for the same end. Suffrage was only another form of assault in the interest of British domination.

Not long ago, a distinguished Briton (Goldwin Smith) is reported to have said:

"Can history show a more memorable fight for independence than that which is being made by the Boer? Does it yield to that made by Switzerland against Austria and Burgundy; or to that made by the Tyrolese under Hofer? The Boer gets no pay; no comforts and luxuries are provided for him by fashionable society; he can look forward to no medals or pensions; he voluntarily endures the utmost hardships of war; his discipline, though unforced, seems never to fail. Boys of sixteen, a correspondent at the Cape tells me—even of fourteen—take the rifle from the hand of the mother who remains to

pray for them in her lonely home, and stand by their grandsires to face the murderous artillery of modern war. * * * Rude, narrow-minded, fanatical in their religion, these men may be. So were the old Scotch Calvinists; so have been some of the noblest wildstocks of humanity—but surely they are not unworthy to guard a nation. * * * If a gold mine was found in the Boer's territory, was it not his? The Transvaal franchise needed reform; so did that of England within living memory and in a still greater degree. But reform was not the object of Mr. Cecil Rhodes and his political allies. What they wanted was to give the ballot to people who, they knew, would use it to vote away the independence of the state."

He went on to say that even in monarchical Italy, where he had recently been, the "heart of the people is with the little republic which is fighting for its independence."

There has been, I think, no suggestion that this great Englishman spoke under the stimulus of Transvaal gold. Have we come to a time when a citizen of the Great Republic may not express like views without becoming a "suspect"? Must we turn our pockets inside out to verify our disinterestedness, when we speak for a "little republic which is fighting for its independence"?

We have not long passed the time when the man who spoke against the "little republic" would have

been the "suspect." A paper that I read recently head-lined a news dispatch, announcing the return of a young American who went to South Africa to fight for Boer independence, thus: "The Return of a Mercenary." Yet the act and the motive of this adventurous young American would, a little while ago, have reminded us of LaFayette or Steuben.

Mr. James Bryce recently said:

"Indeed, the struggles for liberty and nationality are almost beginning to be forgotten by the new generation, which has no such enthusiasm for these principles as men had forty years ago."

And, at the moment when two republics are *in articulo mortis,* some of our journals congratulate us over the prospect of an increased trade with the "Crown Colonies" that are to be set up in their stead, and over the increased output of the Johannesburg mines. The emperor of Germany is reported to have forestalled President Krüger's personal appeal by the statement that Germany's interest would be promoted by the British conquest of the republics. And Bishop Thoburn asks: "Why should people lament the absorption of the small powers by the large ones?"

Never before has American sympathy failed, or been divided, or failed to find its voice, when a people were fighting for independence. Can we now calculate commercial gains before the breath of a dying republic has quite failed, or the body has quite taken

on the *rigor mortis?* If international justice, government by the people, the parity of the nations, have ceased to be workable things, and have become impracticable, shall we part with them with a sneer, or simulate regret, even if we have lost the power to feel it? May not one be allowed to contemplate the heavens with suppressed aspirations, though there are no "consumers" there? Do we need to make a mock of the stars, because we can not appropriate them—because they do not take our produce? Have we disabled ourselves?

Mr. Hoar says that "by last winter's terrible blunder * * * we have lost the right to offer our sympathy to the Boer in his wonderful and gallant struggle against terrible odds for the republic in Africa." It is a terrible charge.

There was plainly no call for an armed intervention by the United States in South Africa, and perhaps our diplomatic suggestions went as far as usage would justify. But has not public opinion here been somehow strongly perverted, or put under some unwonted repression? If we have lost either the right to denounce aggression, or the capacity to weep when a republic dies, it is a grievous loss.

# PART TWO

# SOME HINDRANCES TO LAW REFORMS

**At University of Michigan, Ann Arbor, March 23, 1897**

When one speaks to young men, and especially to college young men, he is not at full liberty, either as to his theme or the treatment of it. His words may carry further than he thinks. They may give a turn to a life. Soberness of thought and a finger board are among the needs of educated young men. There is a tendency to sprint and kick and tackle and to high jumping that, in the intellectual field at least, needs to be restrained. There are many things in the social and business and political fields that ought to be kicked and tackled, and many barriers that ought to be jumped—but not everything. The rush line and the flying wedge must be used with discrimination in moral and intellectual strifes, for in them the aim should not be to run down an adversary, but to lift him up. Victories in the moral, social, intellectual and political fields are won by bringing a majority over and by organizing that majority. The leader of any

great reform should combine the zeal of a crusader with the wisdom of Solon.

My purpose in this address is not so much to indicate the reforms to which these young men should give their powers and their influence when they enter a professional or a business life, as to point out some of the reasons why selfish interests so often succeed in defeating legal reforms that would, if they were rightly presented and pursued, command the support of a very large majority of the electors. This support is either scattered by a commingling of issues, by making politics of pure business; or rendered futile by the inability, from one cause or another, of our legislators to frame constitutional and suitable laws. I think it safe to say that five-sixths of the voters of the country favor a revision of the corporation laws, which shall limit the purposes for which corporations may be organized; supervise the issuing of their stocks and bonds, so that fictitious and watered securities may not be issued, and every security represent investment or actual value; restrain them from organizing trusts for the exaction of illegitimate gains or the destruction of fair competition, and require such of them as serve the public to render that service seasonably and well. Small stockholders should have better protection. The responsibilities of the directorate should be greater. Corporations should not be allowed, as now, to avail themselves of the loose corporation laws of

one state for incorporation, when their business is to be wholly transacted in another. That is to permit one state to legislate for another. So an even larger proportion of our people would give their emphatic support to the proposition that tax burdens should fall equally upon all property. But they do not, as every one knows. The farmer and the man whose wealth consists of lands, houses, live-stock, implements of trade and such like property, is taxed upon everything he has, though usually at less than its real value. It can not be hidden. But the owner of stocks and bonds and such like property makes his own inventory and the assessor has no way of checking the list. A "tax ferret" sometimes unearths the skulking securities of an individual, but that result only suggests that much more is in hiding. Very much of the unrest and discontent that pervade the minds of the people would be quieted if every man could be convinced that every other man was bearing his fair proportion of the public burdens. I take these two great subjects, corporation and tax law reforms, which have been under public discussion for very many years, as illustrations of the inefficiency of our legislative methods.

For some reason or reasons the honest desire of a great majority of the people that corporate powers shall be limited and regulated, and that tax burdens shall be equalized, does not find expression in the statutes. My purpose is to search out some of the

obstructive influences. First, we note that under our loose laws corporations have greatly multiplied. The railroads have penetrated to every neighborhood; and every county, city and town has its banking, manufacturing and other corporations. During the period of the active development of the western states every possible encouragement was given to the building of railroads. Large subsidies were voted by the counties, cities and townships to secure railroad communications—these aids taking the form of stock subscriptions or of outright donations. The same form of aid, with large donations from private sources, has often been given to secure the location of manufacturing corporations. The old idea of the corporate organization was that a work requiring a combination of the wealth of many persons was to be done, such a work as an individual or a partnership could not accomplish, or that a public use was to be served, and that a corporate agency could be better regulated. But these ideas have become obsolete, and we now have corporations engaged in conducting dry-goods stores, book-stores, drug stores and almost every form of manufacturing or mercantile adventure. These enterprises take the corporate form either to secure a limited liability of the investors, or to avoid the complications that often arise from disagreements between partners as to management, or from the death of a partner. It follows that the persons now interested in maintain-

ing the present loose corporation laws are very numerous and are found in every locality. The employes of the railroads will, spite of frequent labor troubles, be found supporting the management and the stockholders when any legislation that seriously curtails earnings is threatened, because of a fear that such curtailment will require a cut in wages. This large body of managers, investors and employes is composed of individuals of more than the average influence, especially when stirred into activity by a large personal interest. The sum of the investments in corporate enterprises of all sorts is enormous and its distribution very wide. Individual capitalists have their millions so invested, and widows, guardians of orphan children, trustees, retired and superannuated men and women, and educational and charitable organizations are the holders of a vast amount in the aggregate of the stock and bonds of corporations. All the influence of this vast army of investors will clearly be thrown against any unjust or destructive legislation, and very much of it against any restrictive legislation. In a fight against unjust or destructive legislation they will find many allies among those who have no selfish interest to serve and no investments to defend. There must be fairness in the application of the proposed legislation if the support of just and intelligent men is invoked.

There are some things that must be taken account

of: First, it must be kept in mind that the people have not only authorized but invited the organization of all these corporations and the investment of capital in their stocks and other securities. To many of them public aid has been given, and the inauguration of the work has been attended by popular demonstrations of joy. Second, it must also be kept in mind that the bankruptcy of any legitimate business, of a railroad company, of a manufacturing, or a mercantile concern, is a public injury, that is not compensated by destructive cut rates, temporary in their nature, nor by the small savings of the bargain counter. Auctions and sheriffs' and receivers' sales ought not to be promoted. There may be no other way in particular cases, but they ought not to be the desired or necessary result of general legislation. Third, we can not go back to the beginning, wipe everything out and construct our corporation laws in the light of our present experience. The ideal is not possible. We must take things as our unwisdom, or that of our fathers, has made them. As to the past, we can do little more than mend; but the law regulating new corporate organizations is wholly within our power. I do not speak of legal restrictions upon the power of the state to amend or repeal the laws regulating corporations,—that is generally ample—but of the limitations that equity imposes. Innocent investors in securities must have fair treatment. But much mending may be

done, and ought to be. Fourth, the work of reforming our corporation laws is not work for apprentices. The corporate system of the country is not only vast, but extremely intricate. The work is more akin to watch-repairing than to log-raising—and yet the log-raisers have not hesitated to assume it. Fifth, special cases often suggest the necessity of curative legislation; but as most of our state constitutions require that legislation relating to corporations shall be general, it is neither wise nor safe to assume that a particular case is a representative one, and to administer the remedy promiscuously. Sixth, in public affairs, the best attainable good is the thing to be sought. The professor can and ought to deal with ideals, but the true statesman will not forego a gain for good government because it is less than his ideal. He will not force into the opposition those who are willing to join him in an assault upon an outpost of intrenched wrong, because they will not enlist for the war. Every outpost taken and garrisoned for the right, strengthens the right. A house is to be builded, and the man who is willing to work on the foundation should not be driven off because he will not hire for work on the dome. Seventh, the legislation must be just. Unjust, destructive legislation brings a reaction—a back-set. It is either over-turned by the courts, or loses the support of the conservatives, who are reformers but not incendiaries.

Let us see now if we can find some of the reasons why things that on a popular vote would be overwhelmingly supported as abstract propositions, by conservatives and radicals alike, fail year after year to secure legislative action. In about three-fourths of the states the legislatures meet biennially. The sessions, in a majority of the states, are limited to an average of about sixty days. If we admit, for the present, that in each state legislature that assembles there are to be found public-spirited, disinterested and honest men, capable of comprehending the broad subjects of the corporation and tax laws, and of framing laws with exactness and clearness of expression, and with a due consideration of constitutional restrictions, still these difficulties remain: First, to bring these men together in a committee charged with that duty; second, to find for them time, during the stress of a session's work, to give the subject adequate study and to frame the laws that shall suitably and surely secure the results they have reached. And how are the two houses to find time to consider a report necessarily late in its presentation, within the short limits of the legislative session? The theory of these limitations of the legislative sessions seems to be that, aside from revenue and appropriation bills, and bills of a local nature, only patching and tinkering is to be done. A general code of laws has already been adopted, reported in many cases by a commission of revision

a quarter of a century ago, upon the body of which patches, large and small, have from time to time been placed—very often with the result that "the rent is made worse." Now and then a member may be found who has given some preliminary study to these great questions, but as a rule the bills that are found in the pockets of members are of a local nature, directed to the pleasing of a particular constituency, or of some influential member or members of it. The disadvantages under which a revision of the laws upon any great general subject must be pursued by a sixty-day legislature are such that it is rather a subject of congratulation than complaint that it is so rarely attempted.

The framing of a statute is nice work, and every important statute should, as to its frame and its phraseology, be examined by a law committee—or at least by good lawyers. Many laws are framed by men who are wholly ignorant of the constitutional restrictions upon the legislative power—and as a consequence the courts are constantly and necessarily annulling statutes because they are, in form or substance, contrary to the fundamental law.

The inadequacies of our legislatures to deal with a systematic and congruous revision of the laws upon some of the great themes of legislation have many illustrations, even where they sit in unlimited sessions. The first disqualification for such work that I observe in legislative bodies is that the houses,

as well as their committees, sit amid political and social distractions that are not favorable to that patient, continuous study of a single subject that is essential, if good, enduring work is to be done. No member can or ought to give his whole attention on any single day to one subject. He is responsible in his measure for everything that is done in the body of which he is a member. He must be in his seat every day of the session; must be recorded when the ayes and noes are taken; must take part in debates upon other subjects, attend party caucuses, get door-keepers' places for his friends, welcome and entertain his visiting constituents, and do innumerable chores for others of them. He has no uninterrupted hours, unless he snatches them from sleep. He has, in a word, neither the time nor the mental frame for great constructive work in legislation. It may be said, however, that our senators and representatives, national and state, should devote their time when congress or the legislature is not in session to the study of the great questions of legislative reform and to the preparation of bills to carry them into effect; and so they should. But in fact they do not—as a rule. They are in many cases paid only a per diem during the actual sittings of the bodies of which they are members, and if paid an annual salary, the necessity of supplementing that salary by professional or other labor, or, as to the wealthy, of caring for their investments and

business, fills the vacation months with exacting labors. A member of the Indiana legislature gives three months of his time, and perhaps a contribution in money, to the campaign for his election, and two months more to the legislative session, and receives from the state a total of $360, excluding mileage. Most of these members are men of small means, and it is quite unreasonable to demand that they shall give even the sixty days that elapse between their election and the meeting of the legislature wholly and studiously to the consideration of the great questions that are pending for a solution. And again, such questions as tax and corporation reforms are not to be solved by individual investigators in the study. There must be a comparison of views, debate, and the hearing of all interests to be affected, if crudity and confusion are to be escaped. The legislation will be subjected to the fire of the ablest legal minds in the country, as to its constitutionality and as to the interpretation of its provisions. These gentlemen will not be required to turn aside from their critical study of the law, in order to earn a living, as the framers of the law were. The framer of an important law must be more than a master of constitutional law and of clear expression. He must have a practical business knowledge of the matters he is dealing with. There must be not only pathological skill, but a competent acquaintance with the materia medica. Corporation reform has been

very much retarded by the flood of destructive and impossible bills that pours into every legislative body. They are the product of ill-informed minds, often made more than naturally incapable by malice or undue heat. Hysteria and spite are not the progenitors of good legislation. Such bills carry the conservatives over to the opposition. It has been said—and I fear with too much truth in some cases —that these bills are often presented with no other purpose than to excite the alarm of the corporations affected, and that the mover is quite amenable to the influence of reason, if it is urged privately, and is of the right denomination. Bills to regulate the freight and passenger rates of the railroads of a state are proposed by men as ignorant of the complications and difficulties of railroad management as a horse is of astronomy. It is usually easy for the corporations to defeat such legislation; for it is usually easily shown to be unjust and destructive. And so things move along and nothing is done.

There were for many years pending in congress, renewed each session, and advocated by fiery champions, bills to forfeit the land grants of the railroads. A bill to forfeit unearned lands—lands abutting on such parts of the lines as had not yet been completed—could have been passed at almost any time; but these fiery champions of the people would have nothing less than a forfeiture carried back to the date when the railroads should have been

completed. And so the congressional battle went on, but made no progress, while the railroads went on, completed their lines and got the lands. Texas recently passed an anti-trust law, so framed—as the courts interpreted it—as to make it penal for two merchants conducting rival stores in a cross-roads village, at a loss by reason of the limited patronage, to form a copartnership and combine their stocks and capital. It exempted, I think, combinations among farmers, for the purpose of keeping up the prices of farm products, from the penalties denounced against other combines; and the labor organizations always reserve the right to combine for the purpose of raising wages, while insisting that their employers shall not combine for the purpose of keeping up the prices of the products of labor. We may mourn the departure of the good old times when the blacksmith hammered out his own horseshoes; when the hatter made hats, and the shoemaker shoes; when mutton chops and ribbons were not sold in the same store; but we must not too hastily assume that statutes can re-establish the old order. The Texas law was too broad. There must be more consideration, more moderation, more legal acumen, when anti-trust laws are written. A convention resolution and a statute are quite different things. In the next place our legislators are chosen from districts, not from the state at large, and are almost sure to be charged with some local legislation to which they

give the first place in the apportionment of their time and efforts. The favorable judgment of his immediate constituents is the reward he craves. Hence his labors are given to those things that will attract their notice, or the notice of some active and controlling element in his district. At the worst he becomes the attorney in fact of a boss, of a corporation, or of a syndicate. In his better state he gets everything he can for his district—a new judge, a public building, the payment of a private claim, or a high duty on plate glass or castor beans. Upon questions that do not particularly affect his district, or that of some brother member, he will take national or state interests into consideration and give them weight; but he takes little account of the state of the treasury, or of the bad precedent to be made, when an appropriation for his district is pending. He is "agin the government" when the demands of his district and the demands for national economy conflict. There is great human nature in all this, and most men who have had legislative service will be ready to say *mea culpa*. He knows, or thinks he does, what his district wants, and feels a sense of injury if any brother member obstructs or opposes his local bill, and so it comes about that a brotherly reciprocity is established, and much log-rolling legislation is enacted. The idea—the true constitutional one—that every senator and representative represents, in state legislatures the state, and in congress

the nation, precisely as if he had been voted for at large, instead of in a state or a district, seems to be losing its power, not only over our legislators, but in the public mind. The assumption that other members of a legislative body must yield their views as to the wisdom or constitutionality of a local measure to those of the members chosen from that locality is not only impudent, but absolutely destructive of our civil system. This suggestion has been the prolific parent of bad legislation. It is not only quite natural, but quite proper, that much consideration should be given to the information which a member may have as to the local status, with which he has a special acquaintance; but when all information bearing upon the subject has been presented, every conscientious member of the body must under his oath vote his own convictions of the justice or injustice, constitutionality or unconstitutionality of the proposed measure. Mr. Bryce, in his *American Commonwealth,* says of this tendency to localism in our legislation:

"The spirit of localism, surprisingly strong everywhere in America, completely rules them. A member is not a member for his state, chosen by a district but bound to think first of the general welfare of the commonwealth. He is a member for Brownsville, or Pompey, or the Seventh district, and so forth, as the case may be. His first and main duty is to get the most he can for his constituency out

of the state treasury, or by means of state legislation. No appeal to the general interest would have weight with him against the interests of that spot. What is more, he is deemed by his colleagues of the same party to be the sole exponent of the wishes of the spot, and solely entitled to handle its affairs. If he approves a bill which affects the place and nothing but the place, that is conclusive. Nobody else has any business to interfere. This rule is the more readily accepted, because its application all around serves the private interest of every member alike, while members of more enlarged views, who ought to champion the interests of the state and sound general principles of legislation, are rare. When such is the accepted doctrine as well as invariable practice, log-rolling becomes natural and almost legitimate. Each member being the judge of the measure which touches his own constituency, every other member supports that member in passing the measure, expecting in return the like support in a like cause. He who in the public interest opposes the bad bill of another, is certain to find that other opposing, and probably with success, his own bill, however good."

This prevalence of the local idea affects general law reforms injuriously in another particular. Only a particular and local abuse has been observed, and the bill proposed takes that special direction. It may be right, but it is partial; it does not cover the

whole field; and there is a certain amount of popular sympathy with the appeal that one guilty man ought not to be punished while scores of others equally guilty go free. The legislation is framed to meet an isolated case that has come under the observation of the member, and is not laid down on broad lines.

No facts of current history are more apparent than these: that the senate of the United States has largely ceased to be what the framers of the constitution intended it to be and what, for near a hundred years, it was—the sedate and conservative branch of our national legislature; and that the larger body, the house of representatives, has in very many matters involving popular feeling and excitement, been less quickly responsive to these waves of public feeling than the senate. The house acts quickly; the senate talks and does not act at all, if there is an obstinate minority. Waiving some other considerations that have tended to produce these results, I think the controlling fact is this: that in the senate there is an entire absence of leadership, of any power in the presiding officer to discriminate between those seeking the floor, and no rule for closing debate. The combined result is that any senator may at almost any time introduce any subject and speak upon it and force a vote of the senate upon it in some form. The first senator who addresses the chair must be recognized. In the house

there is a strong leadership and a most effective control of the business to come before the house. Members arrange beforehand with the speaker for recognition, and it is not thought to be impertinent for the speaker to ask the member what he desires to call up. There may be some fuming if the speaker refuses to recognize a member because he does not think the matter should be called up at all, or at that time, but everybody sees that it will not do to let everybody call up everything in a house of three hundred and fifty-nine members. The speaker is chosen by the votes of the majority party to the leadership he exercises, and is always open to the advice of the members and to the suggestions or directions of a caucus. He is not administering spites or favoritisms, but is conducting the policies of the majority, and holds his leadership only so long as he holds the confidence of a majority of the house. When a subject is once properly before the house the time allotted to debate is divided fairly to those indicated by the respective leaders on the floor, and the vote is absolutely free. The restraints are upon talk and upon the order of business, and these are self-imposed restraints—in the public interest. In the English house of commons the ministry directs the order of business. There is a parliamentary leader. The house may break away, for here too the restraint is self-imposed, but the break does not discard leadership—only changes leaders. A large legislative body in

which any member may at any time bring up any subject and speak upon it at any length is certain to be impulsive, erratic and unsafe.

A remark upon this topic that was wrung from me while in public life has been incorrectly given in the newspapers; but I did say that there was a crying need of more United States senators, and perhaps in that connection I did mention, by way of illustration, the name of one senator who never had any "little bills" of his own, and was in consequence not afraid to oppose the "little bills" of his colleagues, if the national interests seemed to require it.

The conclusion to which my observation and experience has brought me is that the legislative departments, especially the legislatures of the states, are not capable of dealing in their sessions with the great law reforms that are now imperatively pressing for attention. The present difficulties are largely the result of legislation that was enacted in the rush and excitement of a material development that—especially as to railroads—has now passed its climax. "Anything to get railroads" was then the cry. Now we have come to a time when they are denounced as the oppressors of the people, and the investors are constantly threatened by destructive legislation. The fight has in many cases been so blind and so bitter as to affect all classes of business. The investment in

railroad securities is so enormous and so widely distributed that it could not be otherwise. We are all involved. We can not stand apart.

If our plan of taxation includes, notes, bonds and stocks they must all be listed. It is not essential that all property should be taxed at its full value. It is enough that the taxable value is relatively equal; but it is essential that all property that the law subjects to taxation should be returned and assessed. In a recent interview the Reverend Dr. Rainsford said:

"Let me mention two instances which I personally know to be true. One gentleman worth several millions told me himself that he was assessed on only $30,000. He added that a friend of his, worth ten times as much as he, was assessed on $100,000. Assessments on these estates (and they are not estates in which there is much realty), may have been slightly raised since then, for this conversation occurred two or three years ago. But the evil principle remains."

The Hon. James A. Roberts, comptroller of the state of New York, in his last annual report furnishes some very interesting statistics and makes some advanced suggestions. He notes the fact that the addition of three and one-half millions to the state revenues from new excise taxes had not secured the expected reduction in the general tax rate, and says: "There is danger therefore that

unless a determined effort is made to keep down unusual and extraordinary expenditures, the increased income from the excise law may incite a desire for appropriations and thus raise the tax rate instead of lowering it."

He is right. Easy come, easy go. When everybody feels that his money is being spent everybody is an economist. When one is dining at the cost of another he takes no account of the reckoning. If a scheme of taxation could be devised by which the whole burden of supporting the state—its schools, its benevolent institutions, its police and municipal systems—would be placed upon the corporations and the very rich alone, its adoption would inaugurate an era of the decadence of public virtue and public spirit, and bring in one of public wastefulness and profligacy. It would pauperize in the things that are of more value than shekels. The contributing citizen is the watchful citizen; and we have none too many watchers when all are such. Equality and not spoliation should be the watchword of the tax reformer.

In discussing the question of an inheritance tax Mr. Roberts gives some figures that would be startling, if our own observation had not prepared our minds for them. The taxable value of real estate in the state of New York increased one hundred and fifty-five per cent. between the years 1870 and 1895, while during the same period taxable personal

property only increased six per cent. The equalized taxable value of real estate in 1895 was nearly four billion dollars ($3,908,853,377), while the taxable value of personal property was a little less than half a billion ($459,859,526). Mr. Roberts says: "Now it is a well known fact that the increase in value of personal property in this state of late years has been much more rapid than that of real estate, and that the amount of personal property owned here is equal to, if not more, than the amount of real estate; * * * The total amount of personal property now on the tax rolls is a trifle over one-ninth as much as the real estate and only a fraction more than it was twenty-six years ago." He then states that since 1886, as shown by official returns, there had been invested in corporations alone "nearly five times as much as the total amount of personal property now upon the tax rolls of the state."

The New York financial press report very recently noticed large shipments of gold from San Francisco to New York, and stated they were made to avoid taxation. A way must be devised that will bring to the tax roll this vast aggregate of untaxed personal property; but it will never be accomplished by the impulsive hodge-podge methods of sixty-day legislatures.

The suggestion has been made that only such property as has been scheduled for taxation shall

pass by descent or by will, and that any property, the ownership of which has in his life been annually denied by the decedent in his tax return, shall escheat to the state. There would seem to be a measure of justice in taking the tax dodger at his word—and not allowing him to dispose of property that he has solemnly declared did not belong to him.

Taxation is not equal. Why is it not made approximately so, since the governing majority is in favor of it? Why does not this great middle body of the people, standing between the "plutocrats" and the "anarchists," and many times outnumbering them both, make itself as effectually felt in correcting legal and social abuses as it does in stamping out fires and suppressing riots? The only answer is that the executive and judicial forces of the government act quickly and directly, while the legislative forces, hampered by the considerations I have mentioned, and by the greater complications of the questions, seem to be inadequate to the work of legal reform. The making of wise laws is a higher and more difficult work than that of interpreting or executing them. How are these and other great reform bills to be framed, and how are our legislative bodies to be roused to the exigency of enacting them? It seems to me that the laws must be framed by commissions composed of the ablest men in the states. The commissions must

be given time to make a thorough study of the subject. When they have laid down tentatively the general lines upon which the laws shall be drawn, an opportunity should be given to the representatives of the interests to be affected, and to the public to present suggestions and objections. There should be no attempt to bring in the millennium on the morrow. It would be too sudden. The ideal can not be reached at a step. But we should face that way, and move.

In my judgment, nothing has so much retarded the progress of these reforms as the excesses in speech and action of the men who have stood as their exponents. A brutal policeman may compel us to defend a thief. When a judge gives out the cry of the mob from the seat of the law, he does not promote the solution of any of the troubles we have, but only discloses another, and a very serious one.

It not infrequently happens that those who unseat the public reason by clamorous denunciations of corporations are coining this inflamed and often uninformed public sentiment into dollars that by a secret slot are falling into their own coffers. Reform is not promoted—it is only a squeeze. A recent newspaper paragraph puts it thus: "In Albany they call them 'strike' bills; in Sacramento 'cinch' bills; in Missouri, 'squeezers;' and there you are."

When the udder has been emptied into their pail, the devastations of the cow in the public corn may be resumed—and they will not see her though she be as big as an elephant. A tempest lifts things up, but they come down. It has neither sustaining force nor discrimination. It draws no line between things that ought to be reconstructed and things that should be utterly destroyed.

But before the commission we must have a zealous, sedate, educated, organized, non-partisan, public sentiment. That great patriotic middle body of our people—not a remnant—but the mass must become something more than a fire brigade. It is not enough to say that there must be no violence—the law must not only be obeyed, but it must be right. These and kindred reforms lag only because their supporters are not organized. There is no plan—no effective co-operation. The first step, in my judgment, is the organization of commissions, composed of able, wise and patriotic men, to take up these problems and to give their undivided time and their most solicitous thought to their solution. If there could be co-operation between the states it would be very helpful and would tend to promote another much desired end—harmonious legislation.

# ILLINOIS INHERITANCE TAX CASES

*Josephine C. Drake et al., Executors, &c., Plaintiffs in Error, v. Daniel H. Kochersperger, County Treasurer, &c., of Cook County, Illinois. No. 425.*

*Elizabeth Emerson Sawyer et al., Executors, &c., Plaintiffs in Error, v. The Same. No. 463.*

*Jessie Norton Torrence Magoun, Appellant, v. Illinois Trust and Savings Bank, as Executor, &c., of Joseph T. Torrence, deceased, and Daniel H. Kochersperger, County Treasurer, &c. No. 464.*

## General Harrison's last argument before the Supreme Court of the United States—Made on behalf of plaintiffs in error and appellant in support of the contention that the Illinois Inheritance Tax Law is unconstitutional because in conflict with the provisions of the Fourteenth Amendment.

**Washington, 1898.**

*May It Please Your Honors:*

Before addressing myself to the line of argument which I have marked out, it may not be inappropriate to make reference to the suggestion of the attorney-general of Illinois—that this law might be held by this court to be unconstitutional

as to the third class, and sustained as to the other classes. We have in this law what was evidently intended to be a system of succession or inheritance taxation. This is one of several classes that the law defines and upon which it levies taxes. It is the class, if your honors please, least favored; the unfavored class in this legislation; a class described as "all others," after the two classifications that embrace kinship to very remote limits. It is mostly the stranger who is taxed by this clause. Surely the learned attorney-general would not ask this honorable court to conclude that the legislature of his state would desire that the residue of the statute should be maintained if this part were to be declared unconstitutional. Surely he would not be willing or have us believe that the legislature would have been willing that the unfavored class—the class the legislature was most anxious to tax and to tax most heavily—should escape, while the children and nearer relatives of the decedent are held to be subject to the operation of this law.

There is another feature of the law which, I think I would be justified in saying, after listening to these arguments and reading these briefs, is confessed by counsel to be unconstitutional. There is a feature of it that is not supported by any argument or by any citation which these gentlemen have presented to the court. They have entirely failed to

inform the court, either in the brief or in the oral argument, of the fact that this tax is levied upon gifts and conveyances *inter vivos*, if they are made in contemplation of death or to take effect after death.

MR. MORAN: They are testamentary in character—

MR. HARRISON: Testamentary in character! Does this honorable gentleman contend that, when one is in life and in the full possession of his faculties, he has no natural right to endow a child by an executed gift or conveyance, taking effect immediately, in contemplation of his own approaching death, but that that act is to be rated and put upon the same plane with the gifts by will of which he has spoken? I know it has been a part of almost every law taxing successions that gifts made in contemplation of death are included. Because otherwise such a law could not be executed. But, does Mr. Moran contend that, being in life and in the full possession of one's mental powers and in the full control of one's property, one may not in contemplation of death take from one's safe a package of bonds and hand them to a friend in trust for the maintenance of a minor child, for whose support one's estate has been chargeable, upon the ground that the child has no natural right to such support? I understood that counsel, in response to a question of the court, admitted that the power of the owner

over property during life was absolute. If this be true—and it is plainly true—where is there any authority, where is there any suggestion to be drawn from history or from legal principles, that would put any limitation upon the power of one who is nearing the limit of human life to make provision, by a division of his property, for those whom nature has made dependent upon him? How does the doctrine of a "bonus" for a privilege, as my friend puts it, apply in such a case as that? No right is exercised under the statute of wills or of descents of the state of Illinois or from any other statute. If both those statutes were repealed, the right to dispose of property during life would remain. I take it for granted that there is no answer to this suggestion, or it would have been made.

MR. MORAN: If it had been made earlier it would have been answered.

MR. HARRISON: This provision is written on the face of the statute, and no argument by which you have supported an inheritance or succession tax includes these transactions *inter vivos*. How could the state escheat such property? When the black-robed usher is seen on the distant hill, does a state of incapacity to dispose of property begin at once? Are men to be restrained from giving exercise to those natural affections with which God

has endowed them, and from the discharge of those duties which the domestic relations lay upon them?

A succession or transfer tax may be supported upon principles that may well include gifts and conveyances *inter vivos,* if there be nothing in the constitution of the state to prohibit it—if it be not a tax on property, or be not unequally laid. We are not here to deny that the state may, as the United States did during the war, lay a tax upon conveyances and transfers *inter vivos* and upon testamentary conveyances or dispositions and upon inheritances.

I have answered sufficiently, I think, the suggestion that a part of this law may be stricken out as unconstitutional—the tax on strangers—and the tax on the near relatives be preserved. Your honors know that that was not within the contemplation of the legislature of Illinois; and that this law as to *ante-mortem* gifts can not be supported upon the propositions the gentlemen have contended for.

It may be true, as the opposing counsel have suggested, that we should apologize to the court for occupying its time in discussing the questions whether there is a natural right of inheritance, or a natural right of testamentary disposition. But if your honors please, I think if we will pause for a moment to contemplate the condition in which society would find itself if this monstrous power for which my friend contends were exercised by the leg-

islature of any of our states, we should find a justification for this discussion. In forming their institutions, their national government and their state governments and constitutions, our people were careful to insert in bills of rights or in the bodies of their constitutions many limitations upon each of the departments of government. And, if your honors please, these bills of rights are not subject to the rule "*expressio unius.*" That rule may apply to grants that are made and to powers that are conferred, but surely this court will not say—it has often said the contrary—that there are not rights reserved to the people beyond and above the special reservations of the constitutions and the special declarations of the bills of rights. There are things that are inherent in our system of government; that were born with our very institutions: rights of property; rights of persons; rights that do not find such expression—do not need to find such expression. As to tax laws and as to all laws affecting individual rights and liberties, the laws that are made by our states are to be read in the light of the fact that our government was builded and established for the protection of the individual, and upon the principle running through every part of its structure that men shall be equal before the law—an equality of rights and burdens.

Now let us suppose for one moment that the state of Illinois should repeal its law of wills and its law

of descents. My learned friend thinks it may do so without violating any right. He thinks that it would not be an immoral thing; that it would not infringe any natural right; that it would not be a thing that could be condemned upon any principle of human justice or right, if they were to repeal those laws and, by eliminating all heirs, bring into force the doctrine of escheat and so take to the state all the property within its borders owned by its own citizens, and all the property within its borders owned by citizens of other states. No immorality, no natural right transgressed, nothing that should be shocking to our natural instincts, nothing inconsistent with the principles of free government! That is the doctrine proclaimed here. After all the care we have taken in forming our governments; after all the limitations which we find in the constitution of Illinois—to which I shall presently refer—requiring that all tax burdens upon property shall be equal; after all those limitations for the protection of the individual, that no man's services and no man's property, however insignificant the amount may be, shall be taken without due process of law and without compensation—after all those precautions intended to secure men in their property rights—have things been left by the carelessness of our statesmen in such a position that a casual and communistic legislature of Illinois may take the entire body of individual property, which has

been guarded so carefully in other particulars, at the death of each owner? Have we constructed our system of government upon a principle that leaves it in the power of each legislature to establish state ownership of all property? Have we been careful about small fractions and yet left the body of our property rights, and our most cherished social and family rights, in such a condition that the legislature of a state has the power to destroy them all without guilt or moral dereliction or the transgression of any natural right or political principle? Is that the situation we are found in?

MR. JUSTICE BROWN: Suppose the legislature of Illinois should do that, and a man should die leaving a wife and father and mother and brothers and sisters—

MR. HARRISON: Will your honor allow me to interpolate child?

MR. JUSTICE BROWN: No; I would like to have an answer to the question as put. In what proportion would you divide the property?

MR. HARRISON: I shall come to that after a while, if you honor will allow me. I do not say that these natural laws have all been written out; that the details of them are expressed. That is for the legislature to do. The federal constitution, in recognition of these natural laws, established beyond cavil the natural right of property. By so doing it established, as essential attributes of property,

the natural rights of inheritance and testamentary disposition; and to the states was wisely left the discretion of choosing between them according to state policy. But it is not an arbitrary discretion; it is one that is to be exercised on the lines of nature and those family obligations and relations which have characterized its exercise from the beginning. It is not necessary to inquire within what degrees of relationship natural rights of inheritance may be confined, nor is it necessary to declare that such rights may not extend to the remotest relations. That there may exist amongst near relations various degrees of natural rights, and that different rights to acquire by inheritance may be accorded to different degrees of distant relations, are self-evident facts. These instances present essential differences furnishing a just basis for classification. But, if the statutes of wills and descents should be repealed, this court would find some sound basis of protection in the revival of the doctrine of *post obit* gifts and conveyances or in the doctrine of family ownership. These statutes of descents and wills are but the evidence of presumed and effectuated intention.

Let us look a little further. May I ask my learned friend, if the matter of heirship is so purely arbitrary, whether the last legislature of Illinois might declare that the members elected to that legislature should be the heirs to the property of all

persons dying within the state of Illinois? If the designation of heirs is purely an arbitrary thing; if the child has no natural right, nor the wife, nor the brother, and the legislature has absolute power and arbitrary discretion, as he has told us, why may not the legislature name its own members as the heirs? If the sessions of the legislature are biennial, they might take unto themselves a good deal of property before the statute could be repealed. The doctrine is stated just as broadly as that. The legislature may do what it pleases; may take it all. There is no natural or fundamental right. They may name anybody to be heir, or they may name no one. And yet, if your honors please, I think the courts would find some way to dispose of legislation that names strangers as heirs, and cuts out those nearest of kin. Does my honorable friend believe that the courts of Illinois would sustain a statute of descent that shut out child and wife and substituted strangers to be heirs to the estate? I can not believe that he does or that he would affirm such a power in terms. And yet his whole argument imports that the power is just as despotic and arbitrary as that. What has become—what will become—upon this theory, of all our classification of real estate titles? What kind of a fee-simple did the gentleman have in mind when he said that the owner could only hold for life; that no heir could take it; but that he might during his life give it to

some other man who might hold it during his life? What did those old patents of the United States, under which all the land of Illinois is held, mean, when they granted a section or a quarter section of land to those hardy settlers and to their "heirs and assigns forever"?

MR. MORAN: Could not he alienate it?

MR. HARRISON: Alienate it? Of course. So could any grantee alienate it. But the fact that it was inheritable—that if he died without disposing of it and without making any testamentary disposition of it, it should go to his heirs—was a part of the grant. But it is said those heirs were not defined in the patent. It did not say his children; it did not say his wife; it did not say his brother. That was left to those modifications and regulations which the conscience of the states and the character of their political and social and property organizations might justify the legislature in making. It did certainly involve something more than a life estate which might be transmuted into the life estate of somebody else at the pleasure of the state and taken at last absolutely by the state. Can the title given by the United States be cut off by the state of Illinois by its refusing to define who the heirs shall be, and so taking the property itself? Such a doctrine as that would paralyze all thrift and industry. Why should men work and wear out their strength in accumulating property if it has no family perpetua-

tion? Suppose such a law to be enacted in Illinois as the gentleman defends; would not the universal rule of the state be "Let us eat and drink, for to-morrow we die"? All of the stimulus of thrift would be destroyed by the admission of such a doctrine as that. What is it that makes a father careful? He has married a wife; he has brought a child into life, and his care of them is not limited by his own life. The care and the duty project themselves beyond his grave; and he feels that he must—not that it is a privilege, but a duty growing out of a family relation—that he must make provision for them. Does the gentleman believe that a man may not provide for his infant child when he dies; that every child is to become a foundling dependent upon the charity of the state?

MR. MORAN: This is not the sort of law you are attacking.

MR. HARRISON: I am attacking a principle that you have set up to support this law; the ground upon which you defend this arbitrary and unequal legislation, that a state may, without any breach of natural law or denial of fundamental rights, take to itself all property. I will speak of this particular law presently. You can only defend and uphold this law by this principle which you have proclaimed with such assured confidence. I am trying now to show the court what effects the application of this principle would have upon the communities in

which we live. The family relation would be broken; whatever obligation, whatever bond of duty, the expectancy of property places upon the child would be broken. The parent would have no motive to accumulate. The wife would be without provision. American society, American institutions are founded on the American home in which the father and protector of the family is also its provider; and not its provider only while he lives, but is to make for the helpless and dependent a provision which they shall enjoy when he dies. Are all the benefits that come to the state from family association, traditions and descents to be destroyed? Here stands a venerable man who has accumulated property through years of toil. Death draws near. The pulses of life beat slowly and with the courage of a Christian faith he looks into the grave. But he may not call his son and bestow upon him the heirlooms of the family. He may not take from above the mantel shelf the sword he wielded in his country's defense and put it into the hands of his stalwart son that he may, in his generation, wield it also for his country. The state is to take it all. There is no natural right. The heirlooms, the old homestead, hallowed by family associations, the place of birth that has in it not only so much of sweetness, but so much wholesomeness and restraint—these go to the state. Its agent, the moment the spirit of that faithful man has taken its flight, steps into that abode and lays

his hand upon all these things and carries them off to be at the disposal of the legislature of Illinois. Our social state, the property relation as we esteem it, all our business is builded upon the idea that a man's children and kin shall take that which he has accumulated. Can it be possible, I repeat again, after all the care we have shown, in protecting our property and our civilization, that the only thing that stands between us and an absolute state of socialism is the passage of a law that any casual legislature of Illinois may enact?

I have, as doubtless all the justices have, tried some will cases. I have no doubt that some of your honors, upon the benches of the state courts, have instructed juries in will cases where testamentary incapacity was alleged; and what is the test? First, did the man have sufficient memory and intelligence to recall his property, to know his possessions; and secondly, did he have sufficient intelligence and memory to recall those who had natural claims upon him and to measure their just deserts? What has been meant by the courts in these instructions? So thoroughly has this doctrine of the right of a child ordinarily to inherit, subject to testamentary dispositions and to apportionment in particular cases, where the love or the duty or the service rendered by one child may authorize distinctions—so thoroughly has this idea been instilled into the minds of what Mr. Lincoln called "the plain people,"—that

if you go into your own state, sir (turning to Mr. Moran), and empanel a jury to try such an issue and it is proved that the testator had declared his views of the family relation and of his obligations to be such as have been proclaimed here, the jury will find the testator to be *non compos*—incapable of making a will. The man who would say in connection with the making of a testament, that he did not think anybody's children had any natural right to share in a father's estate; that they stood in the same relation as strangers—

MR. MORAN: Would he not have a right to give all his property to strangers?

MR. HARRISON: Undoubtedly, if he was of sound mind. But in all such cases these tests would be applied; and in that case it would be asked how he came to give it all to strangers. If it could be proved that he had said, in connection with the making of his will, what has been said in this court, there is not a jury in any of our states that would not return a verdict that he was of unsound mind. Such a verdict would be inevitable under such instructions as the courts give in all these cases, viz.: that the testator must appreciate the natural claims upon him. Does the gentleman say there are no natural claims? Has the wife no natural claims? How does it come, then, that in your state, sir, as in mine and in all of the states, I think, the provision made by law for the wife takes precedence of

creditors? There is a share of the estate set apart to her that can not be touched by creditors. Will the distinguished gentleman tell me upon what basis that allowance can be sustained if she has no natural claim? The creditor has, he will allow, a claim that justice must recognize; but I do not know how a creditor would realize his debt if administration was not regulated by the states; I do not know how a man could recover property that was taken from him in life if the law did not provide writs of replevin and sheriffs. Because these things are provided by legislation it does not follow that the legislation may be arbitrary, or the rights given or regulated be taxed as privileges. It is an old maxim of the law that no one is heir to the living; but we have had an extension of the maxim.

The conclusion would not follow, however, even if this monstrous doctrine were admitted, that this law is valid, because the state must deal with all its citizens, not only in tax matters, but in all matters of grace and privilege, upon principles of equality. The grace of a republican state is not a whim. An eastern despot may take property from one and give it to another upon a whim, but the legislature of Illinois may not take or give in that way. When it attempts to show its grace in the matter of testamentary disposition it can not create arbitrary classes and consequent inequality; its grace must pro-

ceed upon that principle of equality which must pervade all legislation.

The basis of citizenship—the political relation on which our government is founded—is that of equality of burden and of right. All men may be required to contribute of their property to the state; if it is necessary for the public service, they may be called upon to give their lives for the state; but it must be proportionately and upon some principle of selection—by lot for the draft, by rate and apportionment, if property is to be taxed. You may not take at one rate from one and at another rate from another of the same class; you may not exact a higher rate from one than from another. You may make taxes ratably upon some principle of proportion and equality. The intent to reach that end must be found in every valid tax law. I do not say that the law must or can be perfectly equal in administration. I do not say that inequalities may not arise, of a minor sort, under every tax law; but I do say that the aim and the purpose of such legislation must be to put an equal burden upon every citizen who is called upon to contribute. This principle is the very breath of our free institutions. What other defense has the minority, if, as is claimed in this case, a tax upon successions may be fixed at any amount and be limited to particular classes, based on value or wealth? The whole revenue of the state might be levied in Illinois upon a

score or two of people, and all the rest of the population exempted from any burden of taxation.

I do not contemplate with satisfaction the accumulation of great wealth in the hands of a few individuals; but to prevent it I would not destroy the very foundations upon which our institutions rest. Least of all can those who have not wealth consent that there shall be introduced into our tax legislation an arbitrary principle that may assess burdens now for the purpose—I think disclosed in the brief and confessed in the argument of the honorable counsel, to be one of the objects of the law—of dispersing property, for this arbitrary power will at another time turn and rend those who install it. As we have said in our brief, during the French revolution they classified one degree of wealth as "superfluous" and took it all. I submit to my friend and to every right-thinking man whether we should not pay a fearful cost for the small relief we might get from tax burdens if we should introduce into our legislation a principle like that for which he contends. This equality of burden, making every man, according to his means, a contributor to the expenses of the state, is one of the most wholesome things in our civil institutions. It is the paying citizen who is the watchful citizen. What would the people of Illinois care what expenditures were made by the legislature if the entire amount were levied upon twenty wealthy men in that state? The best assur-

ance of honesty and integrity and economy in public expenditure, is in a wide distribution of the burdens of taxation—because the man who pays watches.

The provisions of the constitution of Illinois upon the subject of equality are very explicit and very full. I do not think the constitution of any of our states contains any more careful provision for securing an equality in taxation. As to property taxes, it requires that every person and corporation shall pay a tax in proportion to the value of his, her or its property. As to some specific callings which are named, and among which we find the words "franchises" and "privileges," it is required that the tax shall be uniform as to the class upon which it operates. The legislature is then given power to tax other subjects, but only in such manner as is consistent with the principles of equality fixed by the preceding section.

The supreme court of Illinois has said that it is a privilege that is taxed by the law under consideration. Your honors will not think so when you read the law. The law, I think, clearly levies a tax on property. I know there have been decisions in these succession tax cases wherein it was said that because a lien for the tax is created on property that does not make it a property tax; but here every expression in the law shows that it is a property tax. The word "privilege" is not found in the law.

What does it say? "All property, real, personal and mixed, which shall pass by will * * * shall be and is subject to a tax at the rate of one dollar on on every hundred dollars." That is what the law says; and not only that, but at another place it says the tax is to be on the value of this property. Running through every section of the law, the taxing section as well as the sections relating to administration, is the declaration that it is a tax on property. In the case of Maine v. Grand Trunk and I think in the Home Insurance Case and others, this court has held taxes not to be a tax on interstate commerce, because the law said it was a tax on the franchise; and if it had not been for that declaration your honors must have held in the one case that it was a tax on earnings, and in the other on property. Here we have a law that declares the tax levied to be a tax on property, not once, but many times; and as such it is subject to the rule of uniformity to which I have referred in the constitution of Illinois. All these provisions for equality are now guaranteed by the United States in the fourteenth amendment. As Professor Burgess says, the United States, by the passage of that amendment, ceased to occupy the position of a mere "passive, non-infringer of individual liberty," and assumed the position of "an active defender of the same against the tyranny of the commonwealths themselves."

I shall not attempt to discuss the breadth and reach of that great amendment. It is enough to say that for protection against the passion of the state, against any temporary movement that may wrest the people or the legislature of a state away from this great rule of equality and fairness to which I have referred, we no longer rest solely on the guarantees of the state constitution, but on the federal constitution as well.

The ordinary tax which our states have used is the property tax, and my friend defends in part the method of taxation introduced by this law upon the ground that at death the state can lay its hands upon property which during the life of the owner has avoided taxation by false returns. I recognize and condemn quite as strongly as my friend this secreting of property from the public assessor. It is a crime against the state; and the man who hides his property in order that it may escape its fair share of the public burdens is a malefactor. He is of kin to the man who skulks when the call comes to fight for his country; and the man who dodges about from one state to another to escape taxation is of kin to the man who sought Canada during the civil war in order to avoid a patriotic duty. There is such an evil—a very great one—but it is not to be cured in this way. Are we to admit that our legislatures and our administrative officers are inadequate to the duty of preventing the secreting of

stocks and securities from the tax list? I do not think any legislation can be too severe that will bring the recreant citizen to his duty. I have no patience whatever with this too much talk about the privacy of one's own affairs—that the state must not inquire into private business. Under our association as citizens we are partners. We have come under obligations to share equally the burdens of government; and you have a right to know whether I am paying my share or not. You have a right to demand that I shall make a disclosure of what I have. I should not think it too severe a penalty for this prevalent offense if, in the exercise of their rightful power, the legislatures were to enact that a legatee should not take any property that the testator had fraudulently concealed from the assessor. If one repudiates the ownership of property for a series of years in his tax returns it might very well be regarded as an estoppel when the legatee claims it. But the law now under consideration is not a remedy for the evil.

The Massachusetts tax commission have recently submitted a report to the governor of that state recommending that the property tax, by reason of the difficulty of collecting it, should be abolished, and an inheritance tax and some other taxes substituted. My friend would not agree to the abolition of the property tax, and he would be right. A succession tax ought not to be made a substitute for

the personal property tax. The faults and defects in the administration of one law ought not to be the reason for enacting another founded on inequality. The proposition for which we contend does not shut out the state of Illinois from levying an equal and fair tax upon inheritances and successions unless it is a property tax, and so double taxation under the constitution of the state. The gentleman does not speak to the record when he intimates that we represent people who desire to be exempt from any tax. Those we represent, and in that they represent the common interests, are only anxious that this tax shall be put upon a basis of equality and predicated upon a principle that is not destructive of all our social relations and all our property interests.

As to exemptions, the gentleman says, with great emphasis, What is reasonable? Who is going to say? Well, how does the legislature say? It is bound to make them reasonable. It is under precisely the same difficulty that the court is. There is no fixed rule. We can not say that only so much may be exempt in any case; we must look at the amount of an exemption and see whether it is one that is established for a public purpose; whether there is a public reason to support it. In other words, everybody should be interested that the exemption be made. It should not be a favor to the class or individual exempted. The exemption should rest

upon some public consideration that would authorize it as in the interest of all. For instance, upon the theory that it may cost more than it is worth to collect it; or upon the theory that by taking from those of very small means we are liable to take from them the power to make a living and thus throw the burden of their support on the community. But when exemptions are plainly resorted to for favoritism; when they are based upon individual favor and a bonus to the majority, and not upon any public consideration; when it appears that they are used as a means of classifying by values, then this court will say, that while there is a legislative discretion to do what is reasonable, that is not reasonable and we will not sustain it.

As to this exemption of $20,000 to each legatee of the first class. It might result in exempting an estate of $250,000 wholly from taxation if there were heirs enough to take it in portions of $20,000. That is the method of classification here; it is nothing more than a class favor. It does not rest upon and can not be supported by any public consideration whatever. It is a system of classification upon values. Now it is interesting to note, as we pass, that the constitution of Illinois, as to the tax upon property, does not allow the exemption of a dollar —not even the dray and the old horse that draws it. So exacting is the law that every man must pay according to the value of what he has. The tax-

gatherer gets his return if it is only ten dollars. The constitution allows the property of churches and schools and property used for charitable and such like purposes to be exempted; and the supreme court of Illinois has held that this provision excludes the power of the legislature to exempt anything else or any other person from taxation; that the legislature of Illinois can not exempt so much as ten dollars, under the constitution of that state, from the property tax. When we look at the exemptions in this law we see that they were manifestly conferred as favors; that they were resorted to as means of classification; that they can not be rested upon any public consideration; that they were intended to free the great bulk of individual property and of individuals from any tax.

As to these exemptions and their character, a word or two more. There is a curious sort of classification here. The first class consists not only of lineals ascending and descending, but of collaterals. It embraces brothers and sisters. To that class there is allowed, to each person taking a legacy or an inheritance, an exemption of $20,000. The first class includes father, mother, husband, wife, child, brother, sister, wife or widow of a son, or husband of a daughter, or any child or children adopted, or any lineal descendant born in lawful wedlock. So that if there were twenty legatees an estate of twenty times $20,000—or $400,000—would be

wholly exempted. Upon what principle can this be justified? The answer in the appellee's brief and in the oral argument is that the legislature may do that in order to disperse estates. It is a curious fact that in the second section of this act, in attempting, as it seems to me, to repeat the description of the first class, certain members of that class are left out. I refer to the provision in reference to life estates in the second section. Some have been left out, I think inadvertently. I wish your honors would look at that second section. All life estates devised to father, mother, husband, wife, brother, sister, widow of a son or a lineal descendant of the testator, with a remainder to a collateral heir, are exempt. In the first place, I want to call your honors' attention to the amount of that exemption. An estate for ninety-nine years or longer, as Mr. Guthrie has said, given to one of the persons named, though it might be worth $50,000 a year in rentals, and in its aggregate value millions of dollars, goes wholly without taxation. This is the most senseless and incongruous provision that I ever saw in a public statute. The remainder must go to a collateral or to a stranger in order to free the life estate or estate for years from the tax. If then a man left a life estate to his child and the remainder to his grandchild, the life estate would not be exempt, but if the remainder were given to a nephew it would be.

MR. MORAN: I think you misinterpret the law.

MR. HARRISON: I am sure I do not. Let us read it. "When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother and sister, the widow of the son ('the wife of the son' is left out) or a lineal descendant during the life or for a term of years or remainder to the collateral heir of the decedent, or to the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term, the said life estate or estates for a term of years shall not be subject to any tax." What is the condition? The life estate to one of the persons named, the remainder to a collateral. Does it not say so? Will the gentleman tell me what other possible interpretation there can be? I am sure you will see, when you read it, that the life estate is only exempt when the remainder goes to a collateral, but that is only one instance of the incongruity of the law. In addition to the $20,000 there is given to this class an exemption of property that may run up into the millions in value. How can that be defended? Only upon the principle announced by appellee's counsel that it is not a tax at all—that it is a "bonus," and that a bonus is not subject to the law of equality. They say to people of this class: We will let you devise life estates of any value free of tax, but if

you want to devise anything else—any other form of title—of less value, you must pay a tax. We have here exemptions that constitute classifications of property that are based upon favoritism, and upon no possible public consideration.

I now come to the progressive features of this tax. I do not suppose that any lawyer would defend a progressive tax on property in Illinois. It is defended only on the ground that succession is a privilege, like a franchise to a corporation, as if each of these persons were coming to the legislature and asking the privilege to take as heir or legatee. If it can not be supported upon that ground, and is not also free from the further limitation I have suggested, that even acts of grace must be uniform, then progressive taxation will find no defense. I have shown that in the constitution of Illinois the idea of uniformity, of an equal rate, is the dominant thought in the tax provisions. Upon what principle can it be said that a man shall be discriminated against in this succession tax to the amount of $100 because he gets one dollar, or even fifty cents, more than somebody else? If there is an increase of rates it should only be on the increased amounts, the same sum paying always the same rate. There should be so much on the first ten thousand and so much on the second, if any progression is allowed, and that is an extremely dan-

gerous policy. But when you carry the increased rate back so that the six per cent., payable on estates of over $50,000, is assessed not only on all above that amount, but on the first $10,000 that is taxed at three per cent. and the $20,000 that is taxed at four, we have a gross abuse of the power of classification.

I want to say a word about classification, and then I will close. The supreme court of Illinois says this law makes six classes; two are classifications of persons upon the basis of kinship, and four are said to be classifications of property on the basis of value. We admit the principle that the legislature may classify relationship for succession taxes, and that only uniformity in the class is required. But if the basis of classification may be value or wealth, you have opened the way to absolutely arbitrary and unrestrained taxation. You have broken down every requirement looking to equality in the constitution of Illinois and in the fourteenth amendment. You have made nugatory this great charter, the protection of which we are asking. This doctrine of classification appears in other matters than tax cases. In many of the states we have laws requiring legislation to be general, and the courts have said that it is general if it applies to a class—as to cities of a certain population. Upon that basis we have had legislation with reference to cities of the first, sec-

ond and third class—according to population, but always so that a city of the second class may come into the first class as its population increases. In the Gulf and Colorado case, where a special attorney's fee of only ten dollars was levied in certain suits against railroad companies, the court said: "You have not adopted an admissible classification; it does not appear that there is any reason why railroad companies should pay a docket fee in certain cases and nobody else," and the court declined to assume that the legislature might have some reason for such a classification. It was not classification, and the law was declared to be in contravention of the fourteenth amendment. The doctrine declared over and over again, under the fourteenth amendment, is that the legislature is to *find* classes, not *make* them. They are like the poets, born and not made. There must be some natural distinction and division; something that actually exists before the legislature acts. In this case the supreme court of Illinois has justified a classification based only on wealth; and if you admit that as applicable to general taxes, then I repeat that every provision intended to secure equality is destroyed, because of the evasive and illusive answer that it is equal within the classes, and upon a division that the legislature has chosen to establish.

It seems, then, to me—and I have not had op-

portunity or time to read to your honors the numerous citations which appear in our briefs—that this right of inheritance and of testamentary disposition is natural and fundamental, in the sense we contend for. Blackstone—and that expression of his has been at the root of all the foolish talk that has been indulged in—speaks of an utterly unorganized state, when there was no society at all, no civil government, no control, each man for himself. He said that in a state like that it did not seem to him that the child had a natural right to take the property of the parent; that when a man died his property was *res nullius,* and whoever got it had it. Possession and the power to hold it was ownership. It is because there is no law that he keeps who can; he gets who can. But the authorities we have cited show that from the dawn of history in the earliest records, both these rights existed—the testamentary right and the right of inheritance. The right of disposition is an incident of property. Property is the right to possess, enjoy and dispose of a thing. The testamentary right seems to me to originate in the very nature of property and to be an incident of it. The right of inheritance goes back to the beginning, and these two great natural rights have come down to us—sometimes this one restrained and the other given greater scope; now the testamentary right extending only to a third of one's estate;

now to all; and now the testamentary right limited in favor of the widow, so that her portion might be secure. These great natural and fundamental rights are both recognized; and though neither of them is written out on tables of stone, they are both engraved on the fleshy tablets of every man's heart. They have both come down to us from the earliest dawn of history. It does not militate against our proposition that these are natural rights because there seems to be a conflict between them. The one can not wholly prevail without destroying the other. The statute of descents, as the courts have said again and again, is the expression of the legislature upon its conscience and duty as to what is the natural law—as to what should be the natural intention and desire of a testator. The legislature, taking no account of the particular family relations in which service and duty, or insubordination and rebellion may swerve the application of this right one way or the other, defines it as applied to general cases. The family relation and property rights have been built up and stand upon these two great natural rights. The legislature does not give them; it defines them. Perhaps primogeniture was quite natural in feudal times. There must be one head of the castle, that the duty to the king might be discharged and the defense of the castle made good. In every state of society there is this reason or that,

why some preference shall be given to one or to the other; but both have survived and will survive as natural rights. When they cease to be recognized as natural and fundamental rights, we shall have dissolved the basis on which society rests.

# THE OBLIGATIONS OF WEALTH

**Delivered before the Union League Club, Chicago, February 22, 1898**

Monuments and birthday anniversaries should be commemorative of virtues that are still imitable. Scientists have reproduced some of the gigantic animals and reptiles of the world's early history. We look at them with wonder and fear, and congratulate ourselves that they are extinct types. We have no needs that they can supply, and they no shapes or habits that we would reproduce. They could not live in our environments, nor we in theirs.

So there have been among men monsters of power and violence. We can not forget them; but we are glad that they lived in another epoch. The almanac maker notes their birthdays, but there are no assemblages of the people. If monuments have been builded to them, they are likely to be overturned when the dynasty changes, or the commune supplants the state.

But there are men who have so won our hearts that we would recall them if we could. We feel the need of them. No change of dynasties, no outbreak

of the mob, threatens their monuments. One can hardly conceive of any civil revolution, or any riotous outbreak in our country that would not respect the monuments of Washington, and of Lincoln. While they lived they were at times hated by men and by communities; but, when the full stories of their lives were unfolded, when motives and purposes were explored, when the unselfish natures of the men were understood, when the universal beneficence of their public services was seen, all their countrymen rendered them homage.

We assemble on this anniversary of the birth of Washington, not so much, if at all, to bring tribute to him as to learn at his feet the lessons of a conscientious citizenship.

The imitable qualities of Washington's character and life; those that did not exhaust themselves on a locality or a period; that are instructive not only to military commanders and chief magistrates, but to the unofficial citizen; the lessons that he taught for quiet days, when no drum beat calls to duty—these are the qualities and lessons that should engage our thoughts.

Washington was a man who acknowledged his debt to his country, and overpaid it. His thought was how much, not how little, he could give and do.

If we are not hypocrites we will endeavor to imitate the qualities that we profess to admire. Washington took thought of other generations than his

own. His sagacious vision and his anxious thought searched the long vistas of the future. He realized that unless a strong and enduring union of the states was established, based upon principles of justice and an equality of right, his arduous campaigns and his solicitous and laborious civil administrations would have no adequate results. He realized that love of country might grow cold, and selfishness supplant sacrifice, when commerce and wealth and personal and local interests should, in the unheroic days of peace and affluence, become dominant influences in our national life.

In choosing for my theme, "The Obligations of Wealth," I am not wresting this anniversary from its legitimate use. We do not need to forget —indeed, we can not forget Washington, when we reflect upon our obligations to the state. His life teaches no lesson more strongly than that the citizen is under obligation to serve the state; never to shirk his full share of burden and sacrifice, but rather to do more.

Wealth is a comparative term; and my address is not for that very limited body of multi-millionaires called by the Populist orators, "plutocrats." A smaller audience chamber would have sufficed for them; and perhaps the orator should have been of the guild. I want to speak of the obligations of the "well-to-do" people, the forehanded, prosperous

men and women of our communities, whether their estates are reckoned by thousands or by millions.

We live in a time of great agitation, of a war of clashing thoughts and interests. There is a feeling that some men are handicapped; that the race is sold; that the old and much vaunted equality of opportunity and of right has been submerged. More bitter and threatening things are being said and written against accumulated property and corporate power than ever before. It is said that, more and more, small men, small stores and small factories are being thrown upon the shore as financial drift; that the pursuit of cheapness has reached a stage where only enormous combinations of capital, doing an enormous business, are sure of returns.

The demand for cheapness has compacted capital and consolidated small enterprises. It has been found that many items of expense do not increase proportionately with an increased output; that the economies of a vast business are themselves a basis for a dividend; that the fugitive lint reclaimed from the air, the by-products—the waste of the olden time—make a showing on the ledger. The pay-roll is so long that the manager and the mill-worker are further apart than ever before. There is no personal touch. The workmen pour through the mill gate in the morning much as the water pours through the lifted head-gates. Contact is lost between the owner, the president, the board of di-

rectors and the men who work. Questions of economies and of dividends are discussed in the board of directors' meeting; the question of wages in the labor assembly. There is little comparison. The men do not come together. The one side does not hear the other.

The competition between well paid labor and cheap labor, that so long raged between this country and Europe, has taken on a new phase. Massachusetts is complaining of the long hours and cheap labor of North Carolina and Georgia. The legislation of Massachusetts solicitous for the health and welfare of her laboring population, manifesting itself in limited hours of labor, in the prohibition of child labor and such things, seems to have put the Massachusetts mill-owner at a disadvantage in the competition with mills in states that do not impose such restrictions. The great steel mill, with its own railroad to the lakes, its great steamers and barges, its mines of ore and of coal, with the most improved and costly labor-saving machinery, is rendering the survival of the smaller and less perfectly equipped mills doubtful, if not impossible. The profits of the mine owner, of the transportation company, and of the mill have been consolidated.

The seams which mar the face of the social landscape seem to be widening into chasms, and if these gulfs are to be filled we must establish dumps on both

sides of them. It will aid the work if those on either side use the bridges to get a view of it from the other side. Wealth should neither be the object of our enmity nor the basis of our consideration. The indiscriminate denunciation of the rich is mischievous. It perverts the mind, poisons the heart and furnishes an excuse to crime. No poor man was ever made richer or happier by it: It is quite as illogical to despise a man because he is rich as because he is poor. Not what a man has, but what he is, settles his class. We can not right matters by taking from one what he has honestly acquired, to bestow upon another what he has not earned.

You do not injure any man if in the competition of life, by fair methods, by greater skill or thrift, you go to the front. There is nothing more wholesome, more helpful to the striving, than the illustrations which every community affords of the triumph of pluck and thrift over hard and discouraging conditions. The presence of a man on the cliff who was but lately in the gorge is conclusive evidence of a path, and it is much wiser to give our strength to climbing than to stone-throwing. He should send his "hail brother" down, and we should send ours up.

In the discussion of all of these social questions good temper is essential. Men must get together and use facts, not rhetoric. We do not want crusaders or a crusade. The crusader was an ignorant fellow who counted the empty sepulcher

of our Lord of more value than His precepts. In social and political movements he is a destructionist, not a builder. When the house is so rotten that it is beyond repair, there is a call for him to clear the ground. But if the foundation and walls are strong and plumb, and it is only a question of a new roof or of improved interior arrangements, the man of destructive tendencies should be clubbed off the premises. But the leaky roof and unsanitary interior must have attention, and the architect and his workmen must get to work with zeal, and a plan. The tenants will stand together against the destructionists and the fire-bugs; but have a care, for if repairs are not promptly and wisely made; if the dwellers on the first floor cut off the heat and water from the dwellers in the attic, things may become so intolerable that the tenants of the attic will open the doors to the fire-bugs.

Those who occupy the first floor and the commodious and elegant middle stories must pay their share of the gas and water bills. The great middle class of our people has never failed to respond to the fire alarm, though they have only small properties at risk, and these not immediately threatened. But there is danger that they will lose their zeal as firemen, if those in whose apartments the fire has been kindled do not pay their proportionate share of the cost of the fire department.

There must be a searching inquiry into the dis-

tribution of the heat and water supplies, conducted, not by a tip-taking janitor, but by a committee of the whole house. If there has been any monopolizing of these things, or any failure to pay for them proportionately, we must be as active to stamp out the monopoly and the injustice as we are to extinguish a fire. To stamp out a fire is a much simpler process than to correct unjust social or legal relations. The cry of "fire" arouses everybody, and stirs the most sluggish to instant action; but to ferret out a wrong is tedious, and the work neither attracts nor arouses us very much, unless the sting is under our own skin.

The great bulk of our people are lovers of justice. They do not believe that poverty is a virtue or property a crime. They believe in an equality of opportunity and not of dollars. But there must be no handicapping of the dull brother and no chicanery or fraud or shirking. If our plan of taxation includes notes and bonds and stocks they must be listed. The plea of business privacy has been driven too hard. If for mere statistical purposes we may ask the head of the family whether there are any idiots in his household and enforce an answer by court process, we may surely, for revenue purposes, require a detailed list of his securities. The men who have wealth must not hide it from the tax gatherer, and flaunt it on the street. Such things breed a great discontent. All other

men are hurt. They bear a disproportionate burden. A strong soldier will carry the knapsack of a crippled comrade, but he will not permit a robust shirk to add so much as his tin cup to the burden.

The special purpose of my address to-day is to press home this thought upon the prosperous well-to-do people of our communities, and especially of our great cities; that one of the conditions of the security of wealth, is a proportionate and full contribution to the expenses of the state and local governments. It is not only wrong, but it is unsafe, to make a show in our homes and on the street that is not made in the tax returns.

I only allude casually to the sentimental side of this question, to the unpatriotic character of those American citizens who are filching the great privileges of American citizenship.

Equality is the golden thread that runs all through the fabric of our civil institutions—the dominating note in the swelling symphony of liberty. The favoritisms and class distinctions which characterized the governments and administrations of Europe were destroyed with the establishment of government under the American constitution. At the polls, before the courts, in all assemblies of the people, in all legislation, there was to be, not a class peerage, but a universal peerage. And as a corollary, necessary and imperative, to this doctrine of an equality of right, is the doctrine of a proportion-

ate and ratable contribution to the cost of administering the government. Indeed this principle of a proportionate burden might be more properly called an inherent part of the doctrine of equal rights. For one whose right to acquire and accumulate is disproportionately burdened, is denied equal rights. If favored classes may not be created, neither may any class be discriminated against. In all of the early constitutions of the states careful provision was made that the burdens of taxation should be proportional, each man paying ratably upon what he possessed. The state was to gather from all and to dispense for the benefit of all. Whims and favoritism were excluded. Imposition and grace, in a free republican state, must be without discrimination.

It is a part of our individual covenant as citizens with the state that we will, honestly and fully, in the rate or proportion fixed from time to time by law, contribute our just share to all public expenses. A full and conscientious discharge of that duty by the citizen is one of the tests of good citizenship. To evade that duty is a moral delinquency, an unpatriotic act.

The tax-paying conscience is dulled in times of peace. When a ravaging foe threatens a population with fire and sword men appreciate the defense which the government interposes between them and danger.

I want to emphasize, if I can, the thought that the preservation of this principle of a proportionate contribution, according to the true value of what each man has, to the public expenditures, is essential to the maintenance of our free institutions, and of peace and good order in our communities. I do not say that every tax must be universal and touch all property of every kind. The general property tax must do so, but I recognize the fact that excise taxes and franchise taxes, and such like, may be levied in addition to the general property tax, and that the requirement as to such taxes is only that they shall be uniform in the class which is subjected to them, and that the classification shall be natural and not arbitrary.

If we do not hold to this rule of proportion and uniformity, everything becomes subject to the whim of the legislature. The whole revenue of a state may be derived from contributions exacted from a very small minority of its population, the majority going free. To allow such a system is not only to rob the minority thus unduly burdened, but is to rob the state of that which is essential to its healthy existence, and indeed to the life of republican institutions. Honesty and carefulness in public expenditure will then have no effective watchers. The watch of the minority will be ineffectual, and the majority will be careless as to the use of

funds, to the accumulation of which it has not contributed.

In his second annual address to congress, delivered in December, 1790, President Washington spoke with gratification of the state of the public revenues, and said that the prompt payment of the public dues was (I quote) "an honorable testimony to the patriotism and integrity of the mercantile and marine part of our citizens."

The house of representatives, in responding to this address, said: "Nor can we learn without an additional gratification that the energy of the laws for providing adequate revenues have been so honorably seconded by those classes of citizens whose *patriotism* and *probity* were more immediately concerned."

Probity, integrity and patriotism seem to have been thought, in those early days of the republic, to have a very direct relation to tax-paying.

For very many years an opinion has been prevalent that the great bulk of the personal property of the states, especially of the class denominated "securities," including stocks, bonds, notes, mortgages and such like, has escaped taxation. With a very few exceptions the great fortunes in this country are invested in such securities. There is, of course, in the aggregate, a somewhat wide distribution of the stocks and bonds of some of our great corporations, but it seems probable that these smaller

holdings are in a fairer degree represented in the tax returns. The delinquency appears to be largely located in our great cities.

Recent investigations by students of political science, and recent tables prepared by state tax officials, have disclosed an appalling condition of things. The evil seems to have been progressive until, in some of our great centers of population and wealth, these forms of personal property seem to have been almost eliminated from the tax list.

In 1870, in the state of New York, the personal property assessed amounted to twenty-two per cent. of the total property assessed. In 1896 the proportion of personal property assessed had fallen to twelve and four-tenths per cent.

Comptroller Roberts, of that state, declares that as a rule this class of property escapes taxation. The taxable value of real estate in the state of New York increased between 1870 and 1895, 155 per cent., while the value of taxable personal property, as shown by the assessment, within the same time, increased less than six per cent.

Mr. Roberts expresses the opinion that the increase in the value of personal property has in fact been much more rapid than that of real estate, and that the value of the personal property owned in the state is at least equal to, if not more than, the value of the real estate. He states that from two and one-half to three billion dollars of personal

property, taxable by law in New York, escapes taxation every year.

In an article published in the *Forum* in 1897, in advocacy of a progressive inheritance tax, he takes 107 estates, which he says were selected at random in the comptroller's office, and contrasts the amount of appraised personal property found after death, with the amount returned for taxation the year before death. He says that of this number of estates, thirty-four, ranging in value from $54,000 to over $3,000,000, were assessed the year before the decedents' death absolutely nothing. These 107 estates disclosed personalty at death to the aggregate amount of $215,132,366; and this enormous aggregate had the year before the respective deaths of the owners been assessed at the amount of $3,819,412, or one and seventy-seven one-hundredths per cent. of the actual value of the property.

In 1874 the board of state assessors of New York reported to the legislature as follows:

"From our examinations we are satisfied that less than fifteen per cent. of the personal property of the state liable to taxation finds a place on the rolls of the assessor. * * * The amount of personal property assessed in some of the counties is less than the banking capital, and the same is true of thirty towns and cities, among which are some of the most prosperous in the state."

In 1892, the tax board said: "Laws for the assessment of personal property have failed to do

their work, and the failure becomes more complete and more unjust with every successive year."

The tax commission of Massachusetts, which reported to the governor a few months ago, shows that the total valuation of real estate in that state for taxation was, in 1896, $2,040,200,644, and the total valuation of personal property, assessed in the same year, was $582,319,634—about one-fourth.

As to the tax upon securities, or intangible property, as it is called, the commission says:

"In each of the cities a few persons of *unusual conscientiousness* make returns. Such persons are accordingly taxed fully, and, as a rule, much more heavily than their less conscientious neighbors. * * * From the testimony which assessors have given before us, there is a grave suspicion that sometimes sworn statements are falsely made, and that perjury is added for the sake of evading or reducing taxation."

Concluding the discussion upon this subject, the majority of the commissioners say: "That the great bulk of intangible property taxable by law is not reached, is admitted on all hands. It is proved beyond doubt by the sensitive records of the stock and bond market. Securities of all sorts, taxable in Massachusetts, but not taxable in New York and in other states, are publicly bought and sold every day at the same prices in the different markets.

If taxed according to law in Massachusetts, at a rate of from one to one and a half per cent. of their selling value, they could not possibly command the price in Massachusetts which they command in other states; nor could they be sold side by side with shares in Massachusetts corporations, or with mortgage loans, at such prices as to yield about the same interest on the same investment. As a matter of fact, securities of the same solidity and yielding the same income are sold side by side, with no material difference in quotations, whether they are taxable or not taxable. Taxable securities are bought and sold every day, not on the basis of being taxed in fact, but only on the basis of some incalculable and disregarded possibility of their being reached by taxation."

A gentleman of prominence, residing in one of the smaller towns of New England, recently told me that there had resided in his town for many years a gentleman who was reputed to be wealthy, whom he supposed to be worth, perhaps, a million dollars, and who was assessed for $100,000. He died, and when his personal property was scheduled by his executor it was found to amount to about six million dollars—if I recall the figures accurately—and when this property went upon the assessment roll of the town the tax rate was reduced one-half. In other words, this gentleman, living in neighborly relations to his fellow-citizens and dis-

charging apparently with kindliness all of the obligations of citizenship, had been every year of his residence in the town defrauding his neighbors by compelling them to contribute to the public expense a share that he should in honesty and good conscience have discharged. He was filching from every hand that was extended to him in neighborly confidence. His alms were of other men's goods.

A newspaper report of addresses by the advocates of the single land tax to some Massachusetts tax assessors, contains some extreme but interesting statements. A prominent New York lawyer is reported to have spoken with an amazing frankness as to his personal and professional participation in tax evasion, thus:

"They maintain a system which is worth a great deal of money to me, and in these hard times every little counts, and when I think how much they save me in taxes and how much they put into my pocket by the maintenance of their system of taxes I feel grateful to them. I feel grateful to the western farmers, because they pay my taxes. It is not necessary for me to tell lies in New York to get rid of this taxation; it needs nothing but a little clever management. I manage it for many of my clients. One of them is a clergyman's widow, who would no more tell a lie than anything in the world, but I have so managed her property as gradually to re-

duce it, until this year I got her off the list entirely."

The appeal tax court of Maryland, responding to an inquiry from the tax commission of that state, in 1881, said:

"We utterly fail in reaching private securities of any description. Here and there only have they been returned by some conscientious holders."

The report of the revenue commission of Illinois of 1886 discloses that practically the same state of things exists in your state. Indeed, so glaring and outrageous is this withholding of personal property from the tax list, and so great are the inequalities between the counties of your state resulting from this practice, that I notice the labor commission of Illinois recommends the abandonment of the attempt to collect taxes upon personal property.

The statements which are attributed by the bureau of labor, in their report, to eminent citizens of Chicago, as to tax conditions here, are appalling.

Professor Bemis, in a recent letter in the Independent, speaking of affairs here in Illinois, and of some revelations made by your Tax-Payers Defense League, makes a comparison between the commercial agency ratings and the tax list, and gives this instance: "A certain banker, rated by Bradstreet's among the millionaires, is assessed at $1,200, or less than one per cent. of his personal

property; while a poor woman, Mrs. McGuire, is assessed on her real estate at twenty-three per cent. of its value. The question naturally arises, How long will there be any respect for government or law if these things are allowed to continue?"

In conclusion he says: "A great awakening all over the country is needed and that speedily, in order that the people may appreciate the enormity and injustice of existing methods of state and local taxation, and may be impelled to effect changes that shall make of the state an instrument of righteousness rather than what it is now in this matter of taxation—a conniver at fraud and creator of inequality."

It is easy to see how this offense against morality and patriotism has grown to such proportions. The very sense that inequality is injustice has promoted it. One man sees that his neighbor is not making a conscientious tax return, and that if he returns his property honestly he will pay disproportionately. The result is that his conscience finds a salve in the saying, "Everybody does it."

It is probably also true that under the tax laws of many of our states double taxation results and tax-payers take it upon themselves to remedy this defect in the law, not by the methods prescribed by the constitution, but by leaving off from their tax returns such stocks and securities as they suppose to be taxed in other states.

Our system of state governments and the lack of uniformity in our state laws undoubtedly result in some injustice and inequality, but the conscientious tax-payer must abide by the law. The military power of the state responds to his call to protect his property from lawlessness; but the appeal of the law breaker to be delivered from the law breaker is not so strong as that of the law abiding citizen.

Wealth evokes jealousy, and the strong arm of the law is often invoked to protect it from the socialist and the anarchist. It must pay its fair proportion of the cost of making this defense—or the vigor of the defense may fail.

Our oath of fealty includes all the laws, the small as well as the great, the inconvenient as well as the convenient. The compact to obey the laws is the basis of our civil system, the only guaranty of social order, and the test of good citizenship.

Taxes are a debt of the highest obligation, and no casuist can draw a sound moral distinction between the man who hides his property or makes a false return in order to escape the payment of his debt to the state, and the man who conceals his property from his private creditors. Nor should it be more difficult to follow the defaulter in the one case than in the other. If our taxes were farmed out to an individual or to a corporation they would be collected. There would be a vigilant and unre-

lenting pursuit. The civil and criminal processes of the law would be invoked with effect, just as they were against fraudulent debtors under the bankrupt law. Is it not possible to secure public officers who will show the same activity?

When to this enormous and crying evil is added the corruption which it is alleged characterizes the appraisements of real estate in some of our great cities, we have a condition of things with which we dare not palter. We must establish, and at once, a system that shall equalize tax burdens. The men of wealth in our great communities should lead the movement. This great club, organized as a rallying center for loyalty and patriotic citizenship, should hear a call as loud and imperative as that which came to its members during the years of the civil war.

Mr. Lincoln's startling declaration that this country could not continue to exist half slave and half free may be paraphrased to-day by saying that this country can not continue to exist half taxed and half free.

This sense of inequality breeds a fierce and unreasoning anger—creates classes, intensifies social differences, and tends to make men willing to pay their debts in half dollars. The just sacredness of these money obligations, the right of the holders to be paid in money of full value, will be clearer to

these angry men if they see that these securities are paying their lawful taxes.

If there is not enough public virtue left in our communities to make tax frauds discreditable; if there is not virility enough left in our laws and in the administration of justice in our courts to bring to punishment those who defraud the state and their neighbors, is there not danger that crimes of violence will make insecure the fortunes that have refused to contribute ratably to the cost of maintaining social order?

If we are to admit that the obligations of public duty and of personal veracity and integrity are so little felt by our people, and that our administrative and judicial processes are so inadequate that tax frauds can not be measurably restrained, hope for the country is eclipsed.

The failures which have accompanied, in an increased ratio, the attempt to collect the personal property tax, have led many tax reformers to favor its total abolition, and the substitution of other forms of taxation. The failure of the wealthy holders of these intangible securities to pay their just proportion of the cost of government has stimulated a demand for special forms of taxation and for progressive taxation, with a view in some measure to recoup to the community the losses which are inflicted by evasive or fraudulent tax returns. The people will not consent that the

present state of things shall be accepted as a permanent condition.

The spirit of discontent is rife. The farmer, the man of moderate circumstances, has unfailingly and unfalteringly rallied to suppress mob violence and to preserve the peace of our communities. These men are not agrarians or socialists or anarchists, or covetous of other men's goods, but they will not, and should not permit the tax burdens upon their smaller properties to be doubled by the evasions and frauds of the holders of these intangible securities.

Professor Seligman, of Columbia University, a very eminent authority on political economy, says:

"The farmers here, like the landlords there, (Florence, Italy), complain with justice that, owing to the failure of the tax on intangible personalty, they have to pay not only their share but the share of others. * * * The townsman's personalty practically escapes. Hence the unrest of the present day; hence the dissatisfaction of the rural districts; hence the continual efforts made to enforce the taxation of personalty by the system of sworn returns known as the 'listing system.'"

The personal property tax, he thinks, does not secure equality, but incites to dishonesty, and does not respond to the American sense of justice. He, however, represents the farmer as responding to the suggestion of the abolition of the personal property

tax thus: "If the state succeeds in collecting only a part of the tax, is that any reason for our abandoning the whole tax and saddling ourselves with the remainder?"

A very great difficulty in the proper adjustment of the state tax laws is forcing itself upon the public mind, growing out of our federal organization. Before the adoption of the constitution, when each state made its own tariff laws, the power to levy imposts was practically nullified by the competitions between the states. They underbid each other. The solution was found in confiding the tax upon imports wholly to the national government, which could establish and maintain equal rates in all parts of the United States.

In a measure the same embarrassment is now being felt in the framing and administration of the tax laws of the several states. Real or simulated changes of residence are made from one state to another, with a view to finding the most favorable tax conditions, or the most pliable assessors.

Professor Seligman suggests the necessity of the "spirit of interstate comity," with a view to arranging "for a substantially identical treatment of these complicated tax questions," and adds:

"If the American attempts at voluntary co-operation be not successful, the time may yet come when these will be replaced by compulsory co-operation. In a community where the pressure of economic

forces has made us primarily citizens of the United States, and only secondarily citizens of the separate states, a system of taxation, based upon the idea of separatism and mutual jealousy rather than of unity can not permanently endure."

It is not easy, however, to see how a federal control of these questions can be established. The states are not likely to surrender such important powers to the national government.

Yet I think it would be quite well to assemble a convention of tax commissioners from all the states to discuss this intricate and exigent problem. Possibly some general principles might be agreed upon that would remedy the just complaints of double taxation, especially in the case of corporate properties and securities.

I can not believe, however, that it is impossible so to stir the consciences of our people, so to stimulate the independence and courage of our assessors and of our courts and prosecutors, as to secure a fairly general enforcement of the personal property tax. I know that men hesitate to call a neighbor to judgment in this matter. We have too much treated the matter of a man's tax return as a personal matter. We have put his transactions with the state on much the same level with his transactions with his banker, but that is not the true basis. Each citizen has a personal interest, a pecuniary interest, in the tax return of his neighbor. We are

members of a great partnership, and it is the right of each to know what every other member is contributing to the partnership and what he is taking from it. It is not a private affair; it is a public concern of the first importance.

Perhaps there should be a general proclamation of amnesty and a new start, for many men have been enticed into these offenses by the belief that all others were offending.

The pulpit, the press, every agency that deals with public, social and moral questions should lend its help. There should be committees of public safety; for, my fellow-citizens, I do not exaggerate when I say that the public safety is involved in a more equal administration of our tax laws. Returns and assessments must be honest and equal. If there are inequalities in the law they must be remedied by legislation, and not by the usurpations of the individual.

I think we must assume that there are very few, if any, of our states prepared to consent to the abolition of the personal property tax.

As a supplemental tax, levied within the requirements of equality and uniformity, a succession or inheritance tax may be well enough, if the state constitution permits it; but the principle of progression, a higher rate for large estates, seems to me to be inconsistent with that rule of proportion and equality which should characterize all taxation. The practical question, the one our people must solve, and solve

speedily, is the enforcement of the personal property tax and the equalization of real estate assessments.

If no other remedy can be found, perhaps the state might declare and maintain an estoppel against the claim of any man or his heirs to property, the ownership of which he had disclaimed in his tax returns.

If a succession tax is used to recoup the taxes unpaid during life, it should be so framed as to reach the guilty and save the innocent. Perhaps a higher rate could be levied upon property as to which paid tax bills are not produced.

What has already been accomplished in Chicago gives a gratifying hope that a public sentiment can be created that will relieve our states from the scandals and frauds which have characterized the administration of the tax laws.

It is not within the purposes of this address to propose in detail the needed reforms, but rather to emphasize the need, and to suggest that our men of wealth should themselves come forward and take the lead in these reforms; that they should not only show a willingness, but a zeal, to bear their full proportionate share of all public burdens. If they do not the sense of injury is so strong that ways will be found, I fear, to exact more than is equal. To do justice is the best safeguard against injustice.

# ON RETURNING FROM WASHINGTON

**State House, Indianapolis, March 6, 1893**

I do not think, even if the circumstances were more favorable than now surround us, I could say more than the fewest words of thanks. Four years ago, if the calendar is consulted, I left you to assume high responsibilities. If I should consult heart and mind I should say it is ten years since I bade good-bye to my Indianapolis friends. Not the rising and the setting of the sun, but our experiences, give the true sense of duration. I came back to Indianapolis—for since I came to manhood, I have had no other home. Suggestions of an attractive sort were made to me to make my home elsewhere, but it seemed to me that the only home for me was Indianapolis. I am too old to make a new home; not too old, I hope, to renew those old associations that make this so dear a home, and to take within the circle of my affectionate regard this multitude of new faces that I see here to-night. This city has made a wonderful growth since I left it.

I shall have to learn again the landmarks. Change, improvement, expansion and increase are everywhere apparent, and in all this I rejoice with you. The State of Indiana has made corresponding increase. Factories and homes have greatly multiplied, our population has greatly increased. Wealth has been developed, and I trust and believe that with this advancement along material lines there have been a corresponding increase and development of the heart and of the home which alone can make a great people. The nation, too, has had its growth and development; some new lines of progress have been indicated. Within the past few weeks I had the pleasure of lifting over one of the greatest merchant steamships that floats upon the sea that flag of beauty that hangs before me. I regarded it as the precursor and pioneer of the return of that time when the American flag was seen in every sea and the American navy was held in estimation by other nations. Only one week ago I had the pleasure of seeing the greatest ship that has ever been built in America—a battleship, which, when completed, would be able to cope with the greatest ship that England has upon the sea—float from her ways into the Delaware with the name "Indiana" on her side. I will not speak to you of those duties which these years of absence have brought me, or of their performance. I left you with but one certainty, and I return with that—the certainty that I had no other

motive in my heart than the honor of the flag, the sacredness of the constitution and the prosperity of all our people. I come to you again accompanied by a great sorrow, but I trust—and your presence here gives me your witness—unattended by any shame growing out of the discharge of my public duties. Add to your great kindness and to this great welcome which you have extended to me today, the further kindness of excusing me from attempting to speak to you further. I shall be glad to carry out the arrangement of the committee, and to take as many of you as I may by the hand, and in these days and weeks that are to come to meet you in my home, in your homes, as opportunity may offer. May God bless you all.

# TO THE GRAND ARMY OF THE REPUBLIC

**Tomlinson Hall, Indianapolis, September 4, 1893**

COMMANDER WEISSERT, DELEGATES TO THE TWENTY-SEVENTH ANNUAL ENCAMPMENT OF THE GRAND ARMY OF THE REPUBLIC, COMRADES AND FELLOW-CITIZENS—Has not Indianapolis already spoken to you? Have not these gay streets, these waving flags, these smiling faces, given you assurance of welcome to the capital of Indiana? Can I add anything to that magnificent demonstration that has already greeted your eyes?

We welcome you to-night because we are in accord with you. A distinguished senator of the United States objected to the Chinese because they did not, as he said, "homologate." I want to assure you that you do, thoroughly, "homologate" with us. To make a reception altogether pleasant to hosts and guests, there are mutual qualities to be thought of. There must be sympathy between the two; and I declare to you that citizens of Indianapolis and of the state are in thorough sympathy with the organization and the

aims of the Grand Army of the Republic. We welcome you because you have the "arduous greatness of things done" in behalf of the flag and of the country. I see before me men who stood with Thomas in the last shock at Chickamauga who hurled back that advancing and, for a time, irresistible wave of rebel bayonets that threatened to sweep our army into the Tennessee. I look into the faces of men to-night who stood in the bloody angle at Gettysburg, and threw back that desperate charge, that, had it won, would have opened Washington to the rebel army. I look into the faces of men to-night who, in their individual service in the army, have performed deeds of heroism and courage; who, riding with flashing saber over rebel guns, have carried the stars and stripes to victory. I look into the faces of men who at the bayonet's point have pushed back their country's enemies and have planted its flag on rebel ramparts. I look into the faces of men who have shed their blood and dropped their limbs upon the battlefield, and who walk among us to-night, maimed, dismembered, that the honor of the flag might be untarnished and the union unbroken. Can Indiana fail to welcome such? Our hearts and our homes are open to you. If we bowed the knee to any, it would be to you. Can it be possible that, while the survivors of this great struggle are still with us, while

they walk our streets, a generation has come on forgetful of their great achievements? Has the moth of avarice, the canker of greed, so eaten into the hearts of this generation that they are unmindful of these men? God forbid. When the great struggle of the revolutionary war was over, this country was bankrupt, the notes that it had issued were valueless, it was without credit at home or abroad, and too many turned away from the just claims of the soldiers that had followed Washington from Cambridge to Yorktown. The army pleaded in vain for justice at the hands of the government it had saved, but they had to deal then with a bankrupt government, without the power to redeem its pledges, an impoverished people who had spent their all already in that eight years' struggle.

No such excuse can be offered now. This country is rich in the great resources of these accumulated years. Our people can find no excuse for ingratitude toward the soldiers of the land in their inability to meet their just demands. You are assembled to take thought for those things that concern the interests of your comrades comprising this great organization, and of those who stand without it. The American soldier of the civil war has not been commercially greedy. He was not tempted to service by his monthly stipend. If there had been no other impulse than eleven or thirteen dollars a month we should have had no army. The men that

went to the front were not impelled by sordid purposes of hope or gain. And when the war was over, their thought was not of dependence upon the government, but upon their own right arms. I saw that great parade, with the gallant and lamented General Sherman at its head, sweep by the treasury of the United States, and there was not a greedy eye turned toward it. Every eye was toward home, and the hurrying footsteps were bent thither. Every boy who had been spared in the great struggle was anxious to be again at the plow, or in the shop, or in the office, to take up again the work he had laid down that his country might live. Their hearts went faster than the quickstep of the march, on to the humble homes from which they had gone out, to the loved ones they had left there. And all these years, in every community, in every trade, the soldier has been a workman; his family have eaten of the fruits of his own toil. As long as God gave him strength of arm, he wrought and ate the bread of independence. Only when he became the veteran of time, when—as I have said before—the parallels of age drew close about the citadel of life, and the arm that had wrought so bravely for his country and so sturdily for his family, lost its strength; only then did he turn his hopeful eye toward the government for relief. The Grand Army of the Republic has rightly claimed that the man who fell by the

way in the battle of life, from disease, or casualty, or advancing years, and lost the capacity to maintain himself, should be cared for by the nation he helped to save, and not be dependent upon the township poor-fund. I do not propose to discuss the pension question. Many considerations limit me in the discussion of it; but I may say this, that when congress, in its generous recognition of the rightful claims of the soldier, has passed a law for his benefit, we may and we will demand that it shall be beneficially construed. It is a familiar maxim of the law that remedial legislation is to have a favorable interpretation in the interest of the evil to be remedied. Secondly, we may and we do insist that in the administration of the law the soldier's integrity and honor shall not be wantonly impeached. A presumption will be indulged in his favor. We do not ask that any who have fraudulently obtained a place upon the pension roll shall be kept there, but we do ask that that other familiar maxim of the law, that fraud is to be proved and not presumed, shall be applied to the soldier's claim. These general principles—and I can not go into details—I think must be acceptable to every right-thinking, patriotic man. We are impatient only with those who start with a prejudice against the soldier.

Now, my comrades, I have to talk again to-night, and you will excuse me from further speech. You

are welcome. Indiana and Indianapolis, since that shot at Sumter reverberated through our streets, have been loyal to the flag, the constitution and their defenders. We said of those who went to the front amid the blessings and tears of the community, "Brave boys are they, gone to their country's call." There was no voice of detraction then. We welcomed those who were spared to return, with open arms; the great war governor of Indiana spoke for its citizens earnest, enthusiastic words of commendation and love. That your stay here among us may be pleasant; that the meeting of this encampment may be characterized with good temper and with hearty agreement, is my sincere hope. Your expressions should be characterized by temperance, soberness and conservatism, and at the same time by such clearness and decision that no one shall misunderstand what the Grand Army means. I hope to see many of you personally during your stay; and, if we can send you from us after your work is complete, with pleasant impressions of this city that we love so much, we shall be glad that you have come, and will cherish long in our remembrance this great event.

# MILITARY INSTRUCTION IN SCHOOLS AND COLLEGES

The Century Magazine, November 3, 1893

You ask my opinion of the suggestion of Lafayette Post, G. A. R., of New York city, that military instruction and drill be used in all schools for boys. It is good in every aspect of it—good for the boys, good for the schools, and good for the country. A free, erect, graceful carriage of the body is an acquisition and a delight. It has a value in commerce as well as in war. Arms and legs are distressing appendages to a boy under observation, until he has been taught the use of them in repose. The chin is too neighborly with the chest, and the eyes find the floor too soon; they need to have the fifteen paces marked off. The sluggish need to be quickened, the quick taught to stand, and the willful to have no will. The disputatious need to learn that there are conditions where debate is inadmissible; the power and beauty there is in a company—moved by one man and as one man. Athletic sports have their due, perhaps undue, attention in

most of the colleges and high schools; but in the graded schools, within my observation, exercise is casual and undirected. None of these exercises or sports is, however, a substitute for military drill; and some of them create a new need for it. A good oarsman need not be erect or graceful; a good arm and plenty of wind meet his needs. The champion "cyclist" is not apt to have square shoulders. The football captain is so padded that a safe judgment can hardly be formed as to his natural "lines"; but a good leg and momentum seem to me—a non-expert—to be his distinctive marks. In baseball the pitcher seems, to an occasional observer, to have parted with all his natural grace to endow the curved ball.

A military drill develops the whole man, head, chest, arms and legs, proportionately; and so promotes symmetry, and corrects the excesses of other forms of exercise. It teaches quickness of eye and ear, hand and foot; qualifies men to step and act in unison; teaches subordination; and, best of all, qualifies a man to serve his country. The flag now generally floats above the school-house; and what more appropriate than that the boys should be instructed in the defense of it? It will not lower their grade marks in their book recitations, I am sure. If rightly used, it will wake them up, make them more healthy, develop their pride, and promote school order. In the centennial parades in New York, in April, 1889, the best marching I saw was that of some of your

school children. The alignment of the company front was better than that of the regulars or of the Seventh regiment.

If all the school boys of the North had, from 1830 on, been instructed in the schools of the soldier and of the company, and in the manual of arms, how much precious time would have been saved in organizing the Union army in 1861. We were in a very low state, as a people, in military knowledge and training when the great civil war broke out—volunteers in plenty, but few soldiers. I very well remember how hard it was for me to learn which was the right of the company, and to understand why it continued to be the right when the right about had made it the left; and how we had, in 1862, to send to a distant city to find a drill-master competent to instruct the company officers, not one of whom could go through the manual of arms; and how the regiment, after a few half-learned lessons in the company drill, was sent to the seat of war with guns which they had never loaded or fired. Fortunately, the men had the American adaptability and quickness, and our adversary only a little better preparation. It will not be safe to allow war to come upon us again in that state, for war's pace has greatly quickened, and the arms of precision now in use call for a trained soldier. Under our system we shall never have a large standing army, and our strength and safety are in a general dissemination of mili-

tary knowledge and training among the people. What the man and citizen ought to know in order to the full discharge of his duty to his country should be imparted to the boy. Nothing will so much aid to enlarge our state militia, and to give it efficiency and character, as the plan proposed. The military taste and training acquired in the school will carry our best young men into the militia organizations and make those organizations reliable conservators of public order, and ready and competent defenders of the national honor.

# AT THE BANQUET OF THE NEW ENGLAND SOCIETY OF PENNSYLVANIA

**Continental Hotel, Philadelphia, December 22, 1893**

Mr. President and Gentlemen of the New England Society of Philadelphia—When my good friend and your good neighbor and president, Mr. Charles Emory Smith, invited me to be present to-night, I felt a special demand upon me to yield to his request. I thought I owed him some reparation for appointing him to an office, the emoluments of which did not pay his expenses. Your cordial welcome to-night crowns three days of most pleasurable stay in this good city of Philadelphia. The days have been a little crowded. I think there have been what our friends of "the four hundred" would probably call eight distinct functions, but your cordiality and the kind words of your presiding officer quite restore my fatigue and suggest to me that I shall rightly repay your kindness by making a very short speech.

It is my opinion that these members of the New England Society are very creditable descendants of

the forefathers. I am not right sure that the forefathers would share this opinion if they were here, but that would be because of the fact that, notwithstanding the load of substantial virtues which they carried through life, their taste had not been highly cultivated.

I dread this function which I am now attempting to discharge more than any other that ever meets me in life. The after-dinner speaker is unlike the poet; he is not born, he is made. I am frequently compelled to meet in disastrous competition about some dinner table gentlemen who have already had their speeches set up in the newspaper offices. They are brought to you as if they were fresh from the lip. You are served with what they would have you believe to be "impromptu boned turkey." And yet, if you could see into the recesses of their intellectual kitchens, you would see the days of careful preparation which have been given to those spontaneous utterances. The after-dinner speaker needs to find somewhere some one unworked joker's quarry, where some jokes have been left without a label on them. He needs to acquire the art of seeming to pluck, as he goes along in the progress of his speech, as by the wayside, some flower of rhetoric; he seems to have passed it and to have plucked it casually, but it is a boutonnière with tin-foil around it. You can see upon close inspection the

mark of the planer on his well-turned sentences. The competition with gentlemen who are so cultivated is severe upon one who must speak absolutely upon the impulse of the occasion. It is either incapacity or downright laziness that has kept me from competing in this field which I have described.

It occurred to me to-day to inquire why you had to associate six states in order to get up a respectable society. Now, my friend Halstead and I have no such trouble. We are Ohio born, and we do not need to associate any other state in order to get up a good society wherever there is a civil list of the government. If you would adopt the liberal charter measure of the Ohio society I have no doubt you could subdivide yourselves into six good societies. The Ohio society admits to membership everybody who has lived voluntarily six months in Ohio. No involuntary resident is permitted to come in.

But this association of these states and the name New England is part of an old classification of the states that we used to have in the geographies, and all of that classification is gone except New England and the South. The West has disappeared, and the Middle West can not be identified. Where is the West? Why, just now at the point of that long chain of islands that put off from the Alaskan coast, and, if I am to credit what I read, for I have no sources of information now except the not absolutely reliable newspaper press, there are some who

believe that there are wicked men who want to hitch the end of that chain on to another island farther out in the sea. If that should be done, the West would become the East, for I think the Orient has generally been counted to be the East.

I would not, however, suggest a division of the New England Society. It is well enough to keep up an association that is one, not only of neighborhood and historical associations, but of sentiment. Let the New England Society live, and I fancy it will not be long till you enjoy the distinction of being the only great subdivision of the states. For, my fellow-citizens, whatever barriers prejudice may raise, whatever obstruction the interests of men may interpose, whatever may be the outrages of cruelty to stay the march of New England, that which made the subdivision of the Southern states and all that separated them from the states of the West and of the North will be obliterated.

I am not sure, though the story runs so, that I have a New England strain. The fact is that I have recently come to the conclusion that my family was a little overweighted with ancestry, and I have been looking after posterity.

One serious word, gentlemen. The New England character and the influence of New England men and women have made their impress upon the whole country; for even in the South, during times of slavery, educated men and women from New England were

the tutors and instructors of the youth of the South in the plantation home. The love of education, the resolve that it should be general, the love of home with all the pure and sacred influences that cluster about it, are elements in the New England character that have a saving force incalculable in this great nation in which we live.

Your civil institutions have been free and high and clean, from the old town-meeting days until now. New England has believed in and practices the free election and the fair count.

But gentlemen, I can not enumerate all of your virtues; time is brief and the category long. Will you permit me to thank you and your honored president for your gracious reception to-night?

# FOUNDERS' DAY AT STANFORD UNIVERSITY

## The First Memorial Exercises Held at the University

**March 9, 1894**

President Jordan, Ladies and Gentlemen—What I shall say to-day will be the unstudied tribute of a friend to the memory of a friend. My acquaintance with Governor Stanford was not long—a half score of years would cover it—but I saw him during those years under many varying conditions, and was now and then brought into such touch with him that his mind and heart were very fully revealed to me.

This visit to California, to Palo Alto, to the Leland Stanford Junior University, is one that I have looked forward to for a year with great interest and with great anticipations. Not a little of that interest was centered in the fact that the arrangement involved a meeting with Governor Stanford here at the scene of his greatest work. My coming is saddened by his absence. As I remarked the

other day to the students, I realize now first that he is dead. When one dies at a distance from us we hear of the event and our minds receive it as a truth, but the heart does not realize it until we come to some place where we might expect to meet our friend. It is the vacant chair in the family; it is the absence from accustomed places that brings to us the realization of the loss of a friend. I had learned to have a very high regard for Governor Stanford; to see in him some of the noblest attributes that adorn human nature, and chief among these was the gentle, loving character of his nature. Too often those who have been enabled by successful business enterprise to gather about them all the luxuries of wealth so that everything is tributary to them, come to be unsympathetic and forgetful of their fellow-men, to be narrow and selfish. Such was not the influence of his great possessions upon him. His wealth was a vehicle of charity. We have not a few families in this country who, from generation to generation, seem to concentrate all their energies upon the accumulation of great fortunes and the entailment of them upon their children. Such as these may be stars of the first magnitude when only four hundred are assembled, but the Lick telescope can not find them when the world is gathered. Wealth has come to be condemned; to be under suspicion, because of its selfishness; not because it is in itself a thing that has not high and great uses

—not because it is necessarily a barrier over which human hearts may not pass.

The considerateness of Governor Stanford, during the four years that I spent last at Washington, always touched me. He seemed to realize the burdens of the great office which I held, and always approached me in a manner almost apologetic, that he should intrude any further care or business upon my attention. In all his relations to men in public life he was modest, kindly and considerate, and often added a suggestion of practical wisdom to the consultation that roused our admiration and not infrequently secured our adherence.

What a great thing it is when one may have a Founders' Day to commemorate his birth! How short human life is, and how inadequate! When men die we say their earthly work is ended; and for a majority, and to a majority, to our limited observation, it is largely true. Of course, no good life ends at death; but the threads of influence such lives have started extend over limited spaces, touch a few hearts, and are undiscovered to the common eye. There is not time in a human life to complete a great work. There must be succession. Perpetuity is essential to great works; and no one more fully realized this than Governor Stanford. He was an organizer. His thoughts were large, and he understood the philosophy of bringing other men into partnership with his designs, of enlarging the

individual touch by co-operation. Take the two great enterprises with which he was associated. The transcontinental railway—what a wide and strong organization was necessary to its accomplishment! Not one man! What could one pick or one shovel or one engineer do in the construction of that great enterprise? It was a scheme that needed to have brought into it many men of diverse mental attainments, and the muscle of many laborers, and all these into a system that worked like a perfected machine—all this he did. And this great highway of commerce, which in the future years shall bear an increasing traffic between the East and the West, and shall carry, with increasing comfort, speed and safety, generations yet to be born, is one of the great works that will perpetually praise him. This is one of his biographers, and it has written on the rocky faces of the Sierra cañons the story of his participation in one of the great achievements of the century.

This university is his other and better biographer —not a highway of commerce—but a highway of the soul, upon which the aspiring feet may perpetually be borne to the heights of truth and learning. And here, how perfectly can we see this fine faculty of design; of organization; of bringing in that which is needful; of using the element of perpetuity. For, when these learned men who now instruct, and this generation of students, have passed away,

there will be new instructors standing yet nearer to the summits of truth, to instruct a generation of students full of a nobler enthusiasm for learning and for the elevation of the race. It is as men associate themselves with such institutions that their memory is perpetuated. Why is Washington freshly and ever in our hearts? Why is his natal day perpetually kept in remembrance? Because he associated himself with the deliverance of the colonies from foreign domination and oppression, and with the institution of a system of government that has brought liberty, happiness and freedom to this great continent, and will carry them on to generations to come. Napoleon we read of; we analyze his character and study his military genius much as one of these professors—and with little more reverence—might examine and explain to a class the articulated skeleton of some unknown man. He did not associate himself with any great thing in the interest of man, with any great state or institution that had perpetuity.

But I will not detain you longer. Our sorrow for the loss of a friend is greatly mitigated when we can assemble as we do to-day, surrounded by evidences that, not only in the family circle, but throughout all this coast, throughout all these states, and, indeed, throughout the world, he will be held in perpetual veneration and respect.

One loved child was lost, but the promise—the

Abrahamic promise—shall be fulfilled to him—his children shall be more than the sands of the sea, for multitude.

# IN PRESENTING MR. McKINLEY

**Tomlinson Hall, Indianapolis, September 25, 1894**

My Fellow-Citizens—The delightful duty has been assigned me by the state central committee of the Republican party of Indiana to preside over this great meeting. I am to be its chairman, not its speaker, and I congratulate you on that fact. I brought the distinguished gentleman, to whom you are to listen, to this hall this afternoon without sending any courier in advance to find whether there were enough people for him to speak to.

I notice in the audience here to-day, with great satisfaction, the presence of many of our older fellow-citizens. The old men are fond of telling of the "good old times," but the times to which they look back with so much delight are glorified in the fact that the processes of nature and of providence have covered the things that were hard and brought out in the memory those things that were sweet and pleasant. But the good times which I have in mind are not good old times, but very young good times,

so young that only the unweaned babes have no memory of them. Only two years ago this country was not only the most prosperous country in the world—for that it had been before—but it stood upon the highest pinnacle of prosperity that it had ever before attained. This is not the verdict of politicians; it is the verdict of the commercial reporter; it is the expressed opinion of those men who make a profession of studying business conditions. The last two years have been years of distress and disaster.

The losses of them defy the skill of the calculator. It has been said, I think not without reason, that they exceed the cost of the great civil war. These losses have not been class losses; they have been distributed. The holder of stocks and bonds has found his wealth shrinking, and so has the farmer, and the workingman has found his wages shrinking. There has been a general participation in the calamities of the last two years as there was a general participation in the prosperity of the preceding years. The great national debts, like those of the civil war, have sometimes their adequate compensation. Great as was the cost of the war for the Union, we feel that it was adequately compensated in the added glory that was given to the flag and in the added security that was given to our civil institutions and the unity of the nation.

But the losses of these last two years have no such

compensating thought. There is no good to be gotten out of them, except for guidance. They seem to be of retributive nature, like the swamps into which the traveler has unwarily driven, that have no ameliorating circumstances, except as they teach him to keep on the foot-hill and to follow the road that is on the hilltops. Our people seem to be inclined to make the most that can be made out of these years of disaster. We were told in the old times the rich were getting richer and the poor poorer; and to cure that imaginary ill our political opponents have brought on a time when everybody is getting poorer. I think that I remember to have heard of an inscription once upon a tombstone that ran something like this: "I was well; I thought to be better; I took medicine, and here I lie."

Our Democratic friends have passed a tariff bill that is approved—so far as I can learn—by only six Democratic senators and nobody else. We hear of the little coterie of senators—whose names I could not mention, perhaps, for they have not been well identified, but their numbers has generally been fixed at a round half dozen—who decided what the tariff bill should be, and they are pleased with it, and nobody else. Mr. Cleveland has repudiated it, and has declared that it involves "perfidy and dishonor;" that it was shameful in its character and in the influences that produced it; that he would not even put his name to it.

All of the leading Democratic papers in the country have condemned it—both of the old stalwart variety and of the mugwump variety. The Democratic chairman of the ways and means committee has condemned it, and the entire Democratic majority in the House of Representatives. Now that is a great misfortune. It is a misfortune that the Democratic party was not able to evolve a tariff bill that that party would accept as a settlement of the tariff question. But it is not accepted as a settlement.

In the very nature of things, a bill thus passed, and thus characterized, can not be a settlement; and already we have the proclamation from Mr. Cleveland, and from Mr. Wilson, that this is only the beginning of the crusade against American industries; that the war is to go on. Now that is a great misfortune. If we could only prove by our Democratic friends that we were in the bottom of the well, dark and damp and dismal as it was, we would have begun to look up and see whether we could not find some star of hope; we would have begun to anoint our bruises, and try to build some scaffold by which we might try to climb out. But we are told that there are greater depths yet in store for us. And so this country is to be held in a state of suspense upon this question.

It can be ended in just one way, and that is by overwhelming Republican victories in November. When New York gives Levi P. Morton 75,000 ma-

jority and Indiana her state ticket 25,000, and Illinois and those states that have wavered fall again into line, and the next congress is Republican, there will be an assurance that we have found the end of this disastrous condition.

I think the Ohio Democrats the other day declared that all these disasters of which we speak came upon the country under the McKinley bill. Well, to be sure, the McKinley bill was a law until that twenty-ninth day—was it—of August, when the Gorman bill was passed, but it was a law in restraint. It had been arrested. We were listening from day to day to the prophecies that in two weeks, or three, or four, it would be repealed. It was not a law in the sense that any merchant or manufacturer could act upon it. It was dead in a business sense, though alive in the statute. Why, sir, it would be just about as reasonable to complain of a man who had been seized, handcuffed and locked up in a cell for not supporting his family as to complain of the McKinley bill during this period of suspense. And then we are told that under the McKinley bill the price of wool went down—under protective duty—and since it has been made free it is going up; that sugar on the free list was higher than sugar with a forty per cent. duty. All this notwithstanding the old doctrine that the duty was always added to the cost of the domestic article.

But, my friends, I do not want to detain you

from that entertaining feast to which you are invited. I am glad that Indiana to-day gives so royal a reception to Governor McKinley. He has endeared himself to all by his record as a gallant young soldier, battling for the flag. He has honored himself, his state and the country by his conspicuous service in high legislative and executive places. No man more than he is familiar with these questions that now engage the public thought. No man is more able than he lucidly to set them before the people. I do not need to invoke your attention to what he shall say. He will command it. I have now the pleasure of presenting him to you.

# THE GREAT MASS MEETING

**Carnegie Hall, New York, October 31, 1894**

MR. CHAIRMAN AND FELLOW-CITIZENS—This is a very great, but, I somewhat fear, a very impossible audience to speak to. You seem to be quite inclined to do your own talking, and you are doing it very well. I thought I had made an inflexible resolution that I would not speak in this campaign outside the limits of Indiana. But I have found, as has often happened before in my experience, that inflexible resolutions have to bend. I did not make this resolution because I saw any impropriety in one, who had received at the hands of his fellow-citizens the highest civic honors, addressing his fellow-citizens of any of the states upon public questions. I was not quite willing to accept the philosophy of some that the only appropriate habiliment for an ex-president was mummy-cloth.

At the same time I very fully realize that I am under limitations in discussing public questions. I

can not say very much about the last administration, and it is somewhat delicate for me to speak about the present.

But, my fellow-citizens, men are of very little consequence in the administration of our public affairs. They do not turn events. The important matter is the principles or policies that the respective parties represent, and of these I feel very free to speak. And if you will give me your attention I will for a little while give you my views as to the tendency of the policies of the Republican party, which I believe to be beneficent and helpful and patriotic, and of the tendencies of the policies of the Democratic party, which I believe to be hurtful and destructive.

In this great country of ours, this sisterhood of states, this union under one flag and one constitution, there is such a community of influences, such an intermingling of influences, that no election can in any proper sense be said to be local. It is of consequence, and ought to be of concern to all the people of the United States from the St. Johns to Puget Sound, whether the governor of the state of New York shall be a man of clean personal life, a man who illustrates in his own life and history the virtues of high American citizenship, whether he shall be a man who loves our free institutions, who appreciates the sanctity of the ballot-box and the equality of men before the law, or whether he shall be a

man who companies with those who prostitute the ballot-box, who companies with those who degrade public office and public administration. It is of consequence to the whole people whether the great state of New York shall have at the head of her executive department a typical, upright, pure American citizen, or one who regards these things from a low standpoint and looks only to party advantage rather than to the public weal. I have departed from my resolution not to speak out of my own state, because I could not seem to be indifferent to the contest which is on in New York. Because, being in your city upon personal concerns, I would not have any one think that I could be indifferent to the success of one whom I esteem and love as my friend. I believe the candidate of the Republican party, Levi P. Morton, to be altogether worthy of the support of his fellow-citizens, altogether qualified for the highest exercise of the high duties of governor of this great state.

He is not untried or unexercised in public affairs; he has represented this country at one of the most important foreign courts with distinction and honor; he has represented a constituency in this city in the congress of the United States, and as vice-president he presided with a grace and dignity and power over the senate of the United States that was unsurpassed. I am able to say that few men have ever exercised the office of vice-president with more ac-

ceptance, with more honor and more dignity than Levi P. Morton.

Nor do I regard this great contest which is being waged in the state of New York for pure, clean, decent, municipal government as a local issue. The whole country watches that great struggle. It has read with amazement and disgust the revelations of municipal corruption and debauchery which have been laid before the public; it watches with anxious solicitude the decision of the question whether there is power in the body politic of this great city to cleanse itself from these impurities and reassert decent government. It is coming to be recognized by all students of public government that the question of municipal control and management brings these institutions and principles to their severest test, and we watch from all our cities, great and small, throughout the country, this great contest which is now being waged in the city of New York. I hope, sincerely hope, that we shall have another illustration to be added to those which we have had in the past, that however patient the people may be, however neglectful, however unwatchful for a season, when things have become utterly bad, men without reference to party rally to the defense of their institutions and their homes and set things right once more.

There are national questions as well involved in this contest in New York. A congress is to be

chosen, and these constituencies in the great city of New York are to exercise an important influence in deciding the question whether the control of the house of representatives at Washington shall be wrested from the Democratic party.

I want, with your permission, to call your attention now to something looking to the situation and the condition of the country, as viewed from a national standpoint. Our government at Washington has now a more important relation to the business of the country than ever before. In the olden days, when our money was furnished by state banking institutions and when our interstate commerce was left to regulate itself or without regulation, we did not so much appreciate the important touch which the national government has upon the business affairs of the country. Now all our money is issued from Washington. Now the regulation of these interstate railroads has been assumed by congress, and now we realize as we never have before that the question of the tariff touches strongly every man's interest, whether he be rich or poor, throughout the whole country. Men have been debating this tariff question from the platform until it seemed to be threadbare. It seemed as if it was an interminable discussion, but there has come into the debate an orator of the most convincing and persuasive power, and that is experience. Ever since the time when the national government

assumed the function of providing currency for the people, all through these years since the war, the national government has either been in the control of the Republican party or that party has been in possession of one branch of the administration, so that its policy could not be contravened. It has been the constructive party; carrying this country through a great civil war; it developed a financial system that stands unassailed to this day; called also to provide extraordinary revenue for extraordinary emergencies, it introduced the protective tariff.

From that day to this our people have known no other system than the protective system. The Democratic party has now been called to a position of responsibility. For these thirty years it has been an irresponsible party, but in 1892 full control was given to that party to execute its design. Prior to that time, having a president or the house, the senate blocked the way against radical legislation, but in that year it was invested with complete control, and suddenly these gentlemen who had been platform-makers for thirty years, were called to the unaccustomed duty of making law.

Now it is—as we are to be governed by parties, and as all these questions, tariff and finances in their various forms, are to be settled by party elections and party votes—of the highest consequence that the views and principles and purposes of the respective parties should be defined and understood.

The trouble with the Democratic party now is that it is an incoherent party. Who could tell what it was going to do, what its position upon the tariff question was? If I may speak of that position historically, it was that the revenues of the government should be raised by customs duties and that our manufacturers and our workingmen should at least have the benefit of such measure of protection as came from laying duties upon foreign imports adequate to the support of the general government.

This incidental protection was talked of by every one as a thing conceded and desirable, but when they came to frame their platform of 1892 this doctrine was overthrown, and the party went into that campaign upon the proposition that protection, all protection, protection incidental or of a purpose, were unconstitutional. This declaration, in spite of the court decisions, in spite of the opinions of the most eminent jurists in our country, was adopted as the principle upon which the Democratic party was pledged to revise the tariff and administer the government.

All business requires that there shall be some forecast, some foreknowledge, some estimate of what is to come. But when the Democratic party took up the work of revising the tariff, forecasts became impossible; no busines man could tell upon what basis the tariff was to be adjusted. If a party is to act wisely for the common good, there must be some co-

herent principle adopted and accepted by the masses of the party, which we may expect to find exemplified in the laws they make.

But how have we found it?

I think, perhaps, of all the insects the grasshopper is the one most without an objective point. No one can ever tell, nor does he know himself, when he jumps, where he is going to alight; it may be on the crown of a sunflower, or it may be in a horse pond. And so this lack of purpose, this lack of harmony, of which I have spoken, and which I shall presently illustrate, pervaded the party, and was largely instrumental in producing that disastrous depression under which the country has been laboring for two years. I said in a casual conversation with some newspaper people a year and a half ago, when I was here, that I feared Mr. Cleveland had a wild team to drive. It has turned out so. It did not require a prophet to say that it would turn out so, for these Democratic representatives, chosen from these widely scattered districts over the whole country, had been pledging themselves to any view of the tariff question or of the financial question that seemed to them in their respective districts likely to bring them a few votes. When they came together they were embarrassed by these pledges and promises, and the confusion of tongues at the building of the tower of Babel was scarcely greater than the confusion of voices that we

had at Washington when the tariff bill came to be considered. He who would ride in a coach would do well to look to the team as well as to the driver; and it is absolutely essential to the safety and comfort of the passengers that the driver and the horses should have the same objective point.

Now, my friends, with reference to this bill that was referred to. It came into the house with apologies from the chairman of the committee that had drafted it. It was seized upon by the house and transformed before its final passage, and if the Democratic house of representatives, charged with the administration of the business concerns of this great country, had passed their bill and sent it to the senate, they would have created a deficiency of sixty odd millions the first year and a permanent deficiency of fifty millions in the revenues of the government. What would these business men think of a directory, charged with these great concerns, drafting a bill, the purpose of which was to provide a revenue for the expenses of the government, that should pass a bill creating this enormous deficiency; and a bill that, if it had become a law, would have compelled the secretary of the treasury to go into the bond market to realize money to conduct the ordinary affairs of the government? But this was not all. When the bill came to the senate, what a babel of voices was there! The finance committee of the senate prepared and reported several hundred amend-

ments, and thought they were conducting the bill to its passage. The Republicans were debating the measure as reported by the finance committee when they waked up one day to the knowledge of the fact that the bill was in fact under consideration in a Democratic caucus, and that the bill which they were to debate and upon which the senate was to vote was to be a wholly different bill from that reported by the finance committee. Four hundred additional amendments were prepared in Democratic caucus to submit with this bill. What a characterization of this work that is! A bill framed by the house to create a deficiency that would have ruined the government; a bill tinkered by the finance committee in hundreds of points, and then finally passed into the hands of the Democratic caucus committee that reported four hundred more amendments to it.

Am I not right in saying that the party is an incoherent party?

How was this finally adjusted? You will remember that when the repeal of the Sherman bill was pending, Mr. Gorman, of Maryland, undertook to engineer a compromise measure. He claimed to have the approval of the secretary of the treasury, and he thought he had of the president. He had a disastrous experience with that attempt to engineer a compromise. When it became apparent that neither the house bill nor the senate finance committee bill could pass the senate, it became necessary that some

other senator should take up the business of trying to engineer a compromise tariff bill. Mr. Gorman had had experience and declined. So Senator Jones, of Arkansas, an estimable gentleman, undertook the work; and in a speech in the senate he has told us how he went about it. He took the bill as it was with the finance committee amendments and went about to each Democratic senator and asked him what he found objectionable in the bill, and what changes must be made to obtain his vote and he tells us that he carefully noted with pencil on the margin of the bill (those bills are printed with large margins) the objections of each senator. Now what was that process? It was simply equivalent to going to each senator and saying: "What will you take to vote for this bill?" And without reference to any principle, without reference to any thought that was common or of a party nature, that bill was adapted to the demands of the different senators. A senator who had a collar and cuff interest in his state looked out for that interest. The Alabama senators thwarted Mr. Cleveland's demand for free raw material so far as coal and iron were concerned. They insisted upon a reduction of the duty upon coal and iron, and it was yielded. And so through the senate that process went on, and this bill was made.

Now, my countrymen, I do not stand here to say anything unkind of individuals. But I do stand here to submit to the intelligent judgment of the

citizens of New York, without regard to politics, whether that is the way to make a tariff bill.

Well, finally, forty-three votes—which was the number required—were obtained for the bill. One Democratic senator voted no, and, though he denounced the bill so bitterly, I believe he is now trying to point out to you some of its virtues. The bill went to the president—no, first it went back to the house in congress. The house conferrees, after a long session—and you will remember that from these conferences the Republicans were altogether excluded; it was a meeting, a conference, of the senators and members of the house who were of Democratic politics. Weeks and weeks they discussed these differences between the senate and the house, the house conferrees declaring that they would never agree to the senate bill; that it was violative of Democratic principles, whatever they may be, and that they would never agree to it. They waked up one morning to a knowledge of the fact that the senate itself had repented of passing the bill, and that if the bill ever got back on the table of the vice-president, it would be killed in the senate. And so the dreadful alternative was presented to the party of taking the senate bill or adjourning without passing any tariff bill at all.

And these managers on the part of the house, who had said, and who have repeated over and over again that the bill was in violation of all Dem-

ocratic thought upon the tariff—who have even hinted, yea, more than hinted; who have charged—that it was presided over in large part by the influence of gigantic trusts—these men finally accepted the bill rather than accept the alternative of going to the country and confessing their incapacity to legislate upon the subject. It would have been a misfortune, I agree, for the Democratic party if it had failed to pass a tariff bill, perhaps not greater than that which awaits it now, but still a misfortune; but what a godsend it would have been to the country! There is not a Democrat who hears me to-night, and I hope that there are some who do, who does not know that if it had been announced that that tariff bill was dead and that this congress would adjourn without any legislation, there would have been an instant revival of business all over the country. There is not one of these gentlemen who has any relations to Wall street that would not have regarded a tip that that thing was to have happened as an equivalent to a fortune, and would have gone into the street on the long side to the extent of his credit. And it has happened before, I am sorry to say, that events that have been disastrous to the Democratic party have been good for the country.

Now let us trace this bill a little further. It went to the president, it went to the president in a constitutional sense. I am not sure that he ever allowed it to get near him actually. Some of the newspaper gentle-

men insisted that it remained in the next room until the ten days had expired. Now, what did the president say about it? He said, speaking from a party standpoint, that it was a bill characterized by party perfidy and dishonor. And what did he say about it from the standpoint of the structure of the bill itself? He said that it was full of inconsistencies and crudities. I do not quote his exact terms, but the substance of them. He said that it was unequal. He said that he could not see why wool should be on the free list as raw material and iron and coal taxed. There never was a stronger appeal made to any man in public office than was made to Mr. Cleveland to give his approval of that bill. His office was thronged by prominent Democrats, telling him that his veto of the bill, or even his refusal to sanction it, would be disastrous to the party. But, in spite of all this pressure, so settled was his conviction that the bill was a miscarriage that he refused to append his name to it, and wrote to Mr. Catchings a letter defending his course in doing so.

Now, my countrymen, that is the result of thirty years of Democrat platform-making and campaign discussion—a bill that nobody approved. I have not read a newspaper, whether of the straightout Democratic persuasion or what you call in New York the mugwump character, that has approved this bill. It is without any newspaper sponsor. It is without a

sponsor among the public men of the Democratic party. It is *nullius filius.*

Now, what have we a right to expect from the party? Is not this a low statement of the obligation the Democrats were under to the country that they would frame a bill which they would stand by themselves? We could not expect that they would frame a bill that would please Republicans, but we had a right to expect that they would frame a tariff bill to which, when they had completed it, they would give their assent, upon which they would stand as a settlement of this interminable, distracting question. Instead, they have given us a bill that they have immediately set about to mend, for it was part of the caucus resolution in the house that, while it accepted this senate bill, it would immediately at that session pass important bills amending the bill and send those bills to the senate, and would stay there until the senate acted upon them. And forthwith several important measures—very important as regards revenue—were passed by the house of representatives and sent to the senate for its action. It is quite possible, indeed probable, that but for the intervention of Mr. Carlisle the free sugar bill that came from the house might have been passed by the senate. Although the house had passed a bill creating an enormous deficiency we might have hoped for a better knowledge of this question on the part of the senators, but they were rushing on to

pass this free sugar bill when Mr. Carlisle, in alarm, sent to Senator Harris, of Tennessee, a letter begging him not to allow it to be done, and telling him if it was done, it would create an enormous deficiency in the revenues of the government. The Democratic house passed a bill that would have sent the government into the bond market to pay its expenses, and the Democratic senate would have repeated the error but for the intervention of Mr. Carlisle, staying their hands.

And now what has all this cost the country? Who is statistician enough to calculate the enormous losses that have fallen upon the country as a result of this attempt of our Democratic friends to revise the tariff, if I may call that a revision which was indeed intended to be a demolition? There has been some attempt to fix the responsibility of the evil times which came upon the country on Republican legislation. Let us consider that question now for a moment. What was likely to be the effect of passing from the McKinley bill to a law framed on the lines of the Chicago platform? I can well understand how a man may be a free-trader or a tariff-reformer without any impeachment of his mental or moral standing. But I can not understand how any man of sound mind could have supposed that we could pass from the McKinley bill to a bill framed upon the lines of the Chicago platform without a business convulsion that would shake the country to its center.

What was the first result? It was a pause. Mr. Cleveland, himself, in his letter to Mr. Wilson, describes the country as timidly awaiting this experiment of legislating upon the tariff. Is it not reasonable that, when this matter is under consideration, and an element of uncertainty as to price is introduced into almost every product of our mills, they should stop and pause? Was it to be thought of that our mills would go on running to the full, storing up their product in warehouses, when there was immediately before them the prospect of a severe cut in the customs duties paid by competing articles that come in from foreign countries? No, my countrymen, it was inevitable; it was a thing that any sane man must have contemplated, if he thought about it, that a period of paralysis and rest would come into all our business ventures. And what did come? I will not attempt to picture the sad state in which our country has been during the last two years. Call it a panic—it is hardly a proper name for it, for a panic implies movement, and this was death. The character of the condition was this: There was a shrinkage, a drying up. Every man who had securities found them shrinking. Every man who had real estate found it shrinking in value and hard of sale. Every man who worked for his living found his place imperiled or his wages reduced. Whoever is responsible, whatever policy is responsible for bringing this condition upon the country, carries a very heavy burden for the

suffering that has come into the houses of our honest working people. Men who had never in their lives before applied for charity came to the relief committees with a blush upon their cheeks and with bowed heads as for the first time they found that their own arm, willing and strong, was unable to maintain them and their families. They said at first: "The Sherman bill," and our Republican friends who had passed it promptly came forward to the message of Mr. Cleveland and gave their votes for the repeal of the bill. It was a measure which, judged from the conditions which prevailed when it passed, I believe was justified. But the expectations of those who passed it were disappointed, and I believe its repeal was justified.

But it became very apparent after the passage of that bill that the crushing weight that rested upon the industries and energies of this country had not been lifted; it was there still, apparently with undiminished weight. The money that had been drawn out of the banks flowed back, and from that day to this the bank vaults in our great commercial centers have been full of money, and there has been no use for it. No new enterprises, no enlargement of the lines of business in any direction, but contraction! And from that day to this we have had a condition in which money was abundant and cheap, but abundant and cheap as it was, our people did not find the condition such that they had the courage to use

it in business. What is it that our Democratic friends want to accomplish, if they have the purpose, in this tariff crusade? They tell us that we are fenced in, hemmed in by our tariff policy, and that if these fences, as Mr. Wilson called them, when he was dined by his London friends, were taken down, we should have great expansion in our business; that what we need here is to open the markets of the world. This is a very resonant expression, and a very fond one with Democrats. I feel sometimes that I should like to call upon some of them to specify what they mean by it. I had a friend once in Indiana who had been very popular in a certain town, but by reason of some connection with a railroad project there, had become very unpopular and did not visit the place for several years. Thinking, however, the clamor against him had subsided, he went back to make a speech, and began by saying: "I am very glad to meet my friends again to-day," when some one in the audience called out "Name them, please; name them."

I feel like asking those gentlemen to name those markets; they are too general; they say they have set about getting them, by getting free raw material for our manufactories. My countrymen, of course, what they have in view is to enable our manufacturers to produce as cheaply as the manufacturers of Great Britain and Germany and France, so that they can sell as cheaply in the markets of the world.

We had already provided for our manufactories by the rebate that was allowed in the tariff of 1890. But does not every man of sense see that if this plan is to be carried out, there is one thing more that must be done. Our manufacturers, if they are to compete in the general markets of the world in the sale of woolens and cottons and other like products, must not only have free raw material, but they must have men and women who will work at the same wages that are paid abroad. The wool that is in a coat is a very small part of its cost. It is the carding, and spinning, and dyeing, and weaving, the wages, the labor that goes into it, that make its cost; and if we are to compete in the markets of the world, selling our goods at the same price with the nations of Europe, we must get our labor as cheap as they get theirs. And yet our friends are always shy of admitting that. Indeed, in the last campaign, they seemed to promise that they would bring in a time when every man would sell what he had to sell, high, and buy what he wanted to buy, low, forgetting that there was a buyer and seller in every transaction and that it could not be high and low.

No, it had just as well be admitted that this chasing after the markets of the world involves scaling down the wages of our working people; for how can one compete, who pays for his labor two dollars a day, with another making the same product who pays fifty cents a day? He must go out of the mar-

ket or cut down wages, so that the workingmen of our country, and all men must suffer; for this is not a question for workingmen only; it is a question that goes to every right-feeling man and right-thinking man, however independent his circumstances in life may be. I can not help but feel that, in a country like ours, where our social security and the good order of our communities depend upon a well-conditioned and well-disposed laboring people, and where the defenses of our flag and our institutions depend upon the strong arm and patriotic hearts of our workingmen —I can not help but feel that it would be a disaster to bring in a condition of wages in this country so low that hope would go out of the heart of the man who toils in the mill. Unless there is hope in the heart, some promise of better things, some margin of comfort, some ladder for the feet of his children to climb to heights that he had not attained; unless these things are in the heart, you may expect anarchy to increase and social disorders.

I have stated before and have been called to account for it here, I think, in New York, by one in very high position, that I thought things might be too cheap. Whenever anything that I wear on my back or use in my house is produced at so low a cost that the man or woman who makes it does not get a decent, comfortable living out of the making of it, I ought to be ashamed to wear or to have it. I suppose there are not many

agriculturists here, but the agriculturist knows that fences are to keep things out as well as to keep things in. And these fences of ours have inclosed the brightest landscapes, the most fertile fields, the richest meadows and pastures, the sunniest hillsides and the stateliest woods that are to be found in the world.

The story of our progress during these thirty years of protection was marvelous, unequaled, with the increase in population having been more than equaled by the increase in wealth; and a committee of the senate, constituted of Democrats and Republicans, to inquire into the effect of the tariff law of 1890, reported that under it wages had appreciated and the cost of living to our workingmen had diminished.

Out on the range beyond these fences of ours I am sure the grass is not so good. The range is already overcrowded, and the angry and horned cattle that browse upon it are coming up to our fences and putting their heads through the cracks to get some of our grass. I think it is quite better that, instead of tearing the fences down and making everything common, we should have some convenient gates that we can let in what we want to and get out what we want to. We are not under a few disadvantages in this strife with the markets of the world. We are not a colonizing nation. England, France, Germany, Italy are engaged now in a mad struggle to take up every part of the

earth that is not already in the possession of one of the great powers. They have carved up Africa and Asia, and are seizing the islands of the sea and establishing their armed hosts and their governors and their steamship communications with such places, and it gives them an advantage. We are not on equal terms. We can not enter into this ruthless struggle to seize the lands of other people. Thank God, American diplomacy has always been a sentimental diplomacy, and every one of the young South American republics has found a cheer and a helping hand from this great republic. We do not push our commerce upon unwilling people at the bayonet's point. We do not fire our cotton and our wool and our opium from the mouths of great guns. We are at a disadvantage.

We are not a colonizing nation. Indeed, it has been thought improper even to take up an island or two, and, not only a commercial island that was important, but one that occupied a military and naval position of great strategic interest and necessity to the United States.

Then again in this contest for the commerce of the world we are without steamship lines. Our communications, our naval marine, has not been re-established yet; and until we have great steamship lines plying regularly and swiftly to these countries with which we would trade, we can not compete with the nations that have. So long as it remains true that a man or merchandise must go from Rio

to Liverpool in order to get to New York, we are not in a good position for competition. And then again these fields have been largely occupied. We should come into many of them as a new trading nation in many branches of commerce. Already English and German and French and other agents have sought out the peculiar demands of these countries and have adapted their products to sale there. Already they have established banking institutions, so that exchange is easy between these foreign ports and London. That has not yet been done by us, though I hope it may be, and New York may stand in such relation to many of these great South American countries. So that we are in too much of a hurry, I think, to take down our fences.

But that is not all. There is good reason to believe that this excuse for these tariff reforms is not wholly sincere, for, my countrymen, we had already, under section 3 of the tariff law of 1890, known as the reciprocity section—we had already secured the most advantageous commercial arrangements with many of the great South and Central American countries, with Cuba and Porto Rico, and even with Germany itself. We had secured terms that gave us the markets of Cuba for American breadstuffs and provisions, and for an important line of manufactured products upon terms no other nation in the world could enjoy, and that gave us practically the control of the trade. We had even found Germany's interest, she

being a large exporter of beet sugar to the United States, was such as to induce that great empire to make a favorable arrangement with us as to the introduction of American products into Germany in exchange for free sugar in the United States. This had cost us nothing. We had given to American households free sugar. A notable item of diminished cost in the household of the poor is free sugar; and we have not reduced the wages of a single American workman. We had got it without cost, save as the public treasury surrendered the revenues. How was this regarded abroad? The Democratic platform of 1893 called it a sham reciprocity.

How was it looked upon in England? The London chamber of commerce memorialized the government to appoint a commission to devise some method to counteract what they called this American commercial crusade. The president of the associated chambers of commerce of Great Britain declared that British trade with those countries had fallen off in that year some $24,000,000, and that this was strongly due to the American reciprocity plan. And recently I noticed in an English newspaper an article congratulating itself upon the fact that under the new tariff bill this arrangement had all been overthrown. I believe that through these arrangements and by them, through our nearness to the Central and South American countries, and to the islands in the West Indies, through that

bond of sympathy that exists between sister republics, we had a large field for foreign trade that, by the proper encouragement for the establishment of steamship lines, would have greatly stimulated American productions, both in agriculture and in the mechanic arts. And this was all thrown away, every one of these arrangements stricken down, and stricken down by gentlemen who excuse their whole project only upon the theory that they want the markets of the world. I think that we may well call the Democratic party to account for its failure to deal with these great public questions in an intelligent and patriotic manner. I do not believe there is a Democratic business man who, if he were a stockholder in a concern whose directory had dealt like this with great affairs, would not at the next stockholders' meeting elect a new board. And yet after all this dreadful time we have had, after drawing the country through this slough of despond, we are still told that the end has not yet been reached; that the work is to go on. Mr. Cleveland tells us that, Mr. Wilson tells us, and the Democratic senators tell us that. It is very distressing information. It is always a comfort when we can say that the worst has happened, and that there is nothing worse in store for us. If we could only know that we were at the bottom of the well, and that no other depths yawned for us, we would anoint our bruises and look up and see if out of the darkness some star did not show itself, and then try to get out

of the hole. But these gentlemen all tell us that this war is to go on; but they are not quite sure to have their own way about it. This congress has three months more of life and only three. A great deal of that time will be required to frame the necessary appropriation bills. And if, as I believe, the congress chosen this fall is Republican, all the balance of the time of the session, I am sure, will be taken up by our Republican senators explaining to their Democratic colleagues what the election this fall meant. And we shall have an end of this destructive war on our American industries.

I have wondered why our Democratic leaders should hate an American smokestack. And yet they have in these campaigns described the American manufacturer as a thieving robber-baron. They have had no terms but those of denunciation for him. I never could see why this could be so—why it was an offense against society or the country for a man to build a mill and give employment to men and women at decent wages inside of it. But these appeals have been made, and the minds of the workingmen were inflamed against their employers. They were made to believe that the man who paid them wages was their enemy, and they must assume toward him the attitude of hostility. They were told that the benefits of protection were not equally distributed, and that the manufacturer got too much. Other men were told if they did not

work in protected industries they got no benefit from protection; as if there was not a gradation between wages, the common wages of the common laborer on the street up to the skilled man in the shop. If the skilled man or engineer gets $20 a month, will the laborer on the street get $1 a day? There is a relation of these things. This question touches all labor. And it is sophistry to attempt to separate labor into two classes, one in the protected industries and one out of it. All are alike interested, and yet their minds have been poisoned, and they were told that we lived under a system that made the rich richer and the poor poorer; and by way of curing it they brought in a time when we were all poor.

My countrymen, I wish we could banish epithets from our public discussion. I wish we could get our people all to understand that when we have prosperous times they are good for everybody; not equally, one may gain more than another; but when we have good times everybody shares them in his measure. And when we have evil times, every man shares the sorrow of them. We are in our social and civil life so knit together that it is an impossible condition of things when the times can be prosperous for some of our people and disastrous for others. Let us take that lesson to our hearts. Let us put bitterness out of them. Let us stop these envyings and these jealousies, and look at these questions from the standpoint of a common love for a common

country, and a brotherhood among the citizens of that land. The workingman is told that the umbrella that sheltered him and his employer is not held quite level. He was getting too much of the drip. He was made angry and he said: "I will smash the umbrella and we will both be out in the wet." But the poor fellow forgot that the employer had a rubber coat, while he was in his shirt sleeves. I think we are wiser now than we were. Adversity is a great teacher. Experience exacts a high tuition, but we carry its lessons a long time. The Democratic party was uninstructed and inexperienced. All of the cost we have suffered has been brought about in an effort to educate it to the management of the government. It has been a very costly experiment, and I submit to you whether we had not better close the school.

I think that the great masses of every political creed and of every religion are patriotic lovers of their country, and that according to their lights they are willing to serve it. It is a country worthy the love of us all. It has a noble history, a history illustrated by great deeds, a history sanctified by great sacrifices, a history that has set in the galaxy of the world's great statesmen some enduring names, a history that has set in the rolls of the military chieftains names that are at the top, a country that has fought a great war to a successful issue without a standing army. A country that has preserved a

vast domain, domestic peace, and individual security; a country that has riches untold, a country whose flag the world recognizes as the emblem of a great power resting upon the affection of its own people. It is worthy of our love. It should be before everything else but God. Wife, children, mother, lover—all these men have put aside for it, and they have poured out their blood in its defense, glad that they might thus contribute to the security of their country and the honor of the flag. Is it too much, then, to ask you, my countrymen, here to-night, in this great national crisis, in this time when our American workmen are suffering and out of employment, in this time when wages are going down and hope is going out, to stand by that good American doctrine that would maintain these wages at a living standard and defend our homes against an enemy more fatal to our peace and prosperity than any armed legions that could be marshaled against them—the invasion of pauperism?

I read this morning that the operatives of Fall River, after a loss of a million or more in wages and the exhaustion of their union treasury funds, have returned to work at the scale proposed. I went only a week or two ago through a busy section of my own state, where industries, stimulated by the discovery of natural gas as a fuel, have sprung up in the last six years with marvelous rapidity. I walked

through lines of workmen from some of those shops bearing on their hats this legend: "Wages 22 1-2 per cent. off." So it is—down, down, down! My countrymen, let us stop this war on American industry and American homes. Let the greatest of the manufacturing states, by her people in this election, speak in a voice that shall be heard from ocean to ocean in condemnation of those who have brought these disasters upon the country. I believe that will be the verdict of the country.

# A TALK ABOUT THE LITTLE ONES

In "The Interior"—Chicago, August, 1896

Why should I be asked to write about education, who am not an educator? In truth, all I understand as to this particular is only this: that the greatest and most important difficulty of human science is the nurture and education of children. There is a sense in which we are all educators—unlicensed teachers. We have no roll of our pupils—they are a truant lot, and take their lessons in a casual way. We are seldom conscious that we are imparting instruction, and the pupils do not know that they are taking lessons. Perhaps the sum of what is learned in this way is greater and more potent in the life of the pupils than what is learned in the schools. The former is absorbed; the latter may be only a skin polish. If this educational number of The Interior is dedicated to the schools, I can contribute only reminiscences; but if it is educational in the broader sense, I might indulge in some suggestions; and, for the increased room it will give me, I shall assume that it is so.

When the boy is six, or it may be seven years of age, the parents say: "It is time we were putting him in school." My dear, deluded friends, he has been "in school" since he was eighteen months old; and for the most of that time he was a scholar without opinions and without doubts; he controverted nothing, save only when his physical desires were crossed, and was more alert, observing, curious and retentive than he will be again. Nothing has become commonplace to him. He has acquired his letters—can read a little; but has any grown person ever had a conversation with him? He has been lectured, teased, chaffed and petted; has had some moral and religious precepts imparted to him. His antics of body and mind have been laughed at; but has any man or woman ever had a conversation with him? He has had, perhaps, governesses and nurses, but never in most cases an adult companion. He may be pert in some things and ways, but he has a store of things that he hides, and will only uncover to a chum. Every boy and girl needs an adult chum as an educational force. Consider the case of a boy. He has been brought into a vast workshop, where the most subtle forces and the most intricate mechanisms are humming and whirling; into a vast picture gallery where thousands of canvases, great and small, are hung; into a great auditorium where on many stages clowns and tragedians are acting and reciting. He needs help; for a habit that will in-

fluence, yes control, his intellectual life is now being acquired. Is he to have a wandering or a fixed eye; a habit of attention or of mental dissipation? Perception is near the base of all intellectual growth. That men can see, and see not, was one of the Bible paradoxes that my infant mind hearing heard not. But the explanatory words "perceive" and "understand" make the saying not only plain but profound. Seeing is a mental, not an optical fact. The great men in every department of labor are the men who seeing, see, and hearing, hear. A "scatter-brain" may run on to a bee tree, but he can not be depended upon to supply the table with honey. We note many mental "characteristics" in men. We say this one has a good memory, and this one great reasoning powers; but from a mental standpoint there are in truth only two great classes among men—the men who give attention and the men who do not.

The first command on the drill ground is "attention;" and it ought to be the first in the nursery, the home and the school. The best way to cultivate the memory is to get a focus and then to give a proper exposure. The most of the things we have forgotten are things we never knew. As soon as a child is old enough to notice anything, he may be taught to make his notice particular and not casual.

**"The clay is moist and soft; now, now make haste,**
**And form the vessel, for the wheel turns fast."**

Why did the good God make things to differ—the leaf and bark and seed, only enough alike to indicate the family, and yet no counterparts in any family—if not for our notice? You can make nothing of a boy to whom a tree is a tree, until you have taught him that it is not so. The boy who has learned to distinguish a beech from a box alder will make other distinctions more easily. I am persuaded that we make too little of childhood in our educational system. The schoolroom gets him soon enough, perhaps too soon, and with too hard a grip; but the guide of the two, three, four and five-year old has been too much off duty. Do not mistake me. The pupils are not to be called in from play; there is to be no hour; they are not to be crammed, nor their feet set in paths, nor to have any suspicion that they are taking a lesson. The object is not knowledge, but the training of a faculty that is then very alert—the faculty of perception. Do not plan to bring objects to their notice so much as to lead them to notice more accurately things that have already attracted their notice. Do not try to be exhaustive, but only to add something. Senator Stanford told me that in the training of his young horses he always stopped the exercise inside the fatigue limit.

The faculty of description, of making others see and enjoy what you have seen and enjoyed, is the handmaid of perception, and the two should walk together. Do not do all the talking; let the child

have a chance. Montaigne says: "'Tis the custom of schoolmasters to be eternally thundering in their pupils' ears, as though they were pouring into a funnel. * * * I would not have him alone to invent and speak, but that he should also hear his pupils in turn." The tank may be full, but if there is no tap how shall we draw from it? Composition will be made easy, and the accuracy of the child's observation will be tested by drawing him on to describe what he has seen. To make giving out easy is quite as much in the way of education as a facility of storing up. The filling of the corn crib implies the emptying of it. It may be well enough to have children commit to memory worthy verse and prose, but a description is better mental exercise than a recital. Remember the little fellow is often very modest and very easily squelched. A laugh, and—as a little friend of mine gave the scripture at family prayers—"there was a great clam." The old saying, "Children should be seen and not heard" has no truth in it, as applied to family life. Every child should be heard, not intrusively, but often, and with attention and sympathy. You are at great pains about his table manners—what he shall eat, and that he shall not eat it with his knife; but we have authority for saying that what comes out of the mouth is more important.

I would not take any of the frolic out of a child's life—no lifting of the finger, no pedantic gravity,

no forcing or cramming—but I would make play and story, the walk, the evening hour upon the knee, all contribute little by little to the development of the faculties of observation and description. It will make the inevitable composition on the cow much easier and more instructive if the writer has observed that all cows do not have horns, and that the long brush tail is not worn so much for the milkmaid as for the flies. Said a little girl, who had with her class just written about the cow, "Mr. Harrison, there was one thing every one of us forgot." "What was that?" I asked. "Why, that the cow has a compound stomach." The truth was, I suspect, that they had never known it, had never observed the vigorous chewing of the cow as she stood in the barnyard. But these were city girls, and the milkman, and not the cow, should have been assigned for their theme.

The person, boy or girl, man or woman, who has acquired the habit of attention, of close observation, and the faculty of describing what has been observed, is an educated person in a truer sense than many another who is more learned. The former is in the way of becoming an intellectual pioneer—the latter may be only a bin of mixed wheat. It must be that in looking at things for six years a habit of looking will be acquired, and it is immensely important that it should be a right habit. Bacon says: "Certainly custom is most perfect when it beginneth in young

years, this we call education which is in effect but an early custom."

I hope these suggestions, misapplied, will not get any of my young friends into trouble. I do not recommend the rod as a means of fixing the attention; though in a way it has that effect. In the case of the child in the home, the lessons should be chiefly given as the stimulant was given to the teetotaler, in Mr. Lincoln's story—"unbeknownst to him."

# AT THE REPUBLICAN RATIFICATION MEETING

**Carnegie Hall, New York, August 27, 1896**

LADIES AND GENTLEMEN—I am on the Republican retired list, not by reason of any age limit nor by the decree of any convention, but voluntarily that the younger men might have a chance, and that I might have rest. But I am neither a soured nor a bed-ridden citizen. My interest in my country did not cease when my last salary check was cashed. I hoped to add to relief from official duties retirement from the arena of political debate. But the gentlemen having in charge this campaign seemed to think that I might in some way advance the interest of those principles which are not less dear to me than they are to you, by making in this great city a public address. I thought they greatly magnified the importance of anything that I could say, but I could not quite content myself to subordinate what others thought to be a public duty to my private convenience. I am here to-night not to make

a "keynote" speech, but only to express my personal views, for which no one else will be in any measure responsible, for this speech has not been submitted to the judgment of any one until now.

I shall speak, my fellow-citizens, as a Republican, but with perfect respect for those who hold differing opinions. Indeed, I have never had so much respect for Democrats as I have now; or, perhaps, I should say I have never had so much respect for so many Democrats as I have now. That party has once more exhibited its capacity to be ruptured, and a party that can not be split is a public menace. When the leaders of a party assembled in convention depart from its traditional principles and advocate doctrines that threaten the integrity of the government, the social order of our communities and the security and soundness of our finances, the party ought to split and it dignifies itself when it does split. A bolt is now and then a most reassuring incident, and was never more reassuring and never had a better cause than now.

But these Democratic friends, who are disposed more or less directly to help the cause of sound finance in this campaign, ought not to expect that the Republican party will reorganize itself because the Democratic party has disorganized itself. The Republican party, if sound money triumphs, as I believe it will, must, in the nature of things, constitute the body of the successful army. We ought not,

therefore, to be asked to do anything that will affect the solidity, the loyalty, the discipline or the enthusiasm of the Republican party.

The Republican party fronts the destructionists and trumpets its defiance to the enemies of sound money. It will fight, however, without covering any of the glorious mottoes and inscriptions that are upon its banner. When the house is on fire—and many of our Democratic friends believe that to be the present domestic situation—the tenant on the top floor ought not to ask the tenant in the basement to bury any of his opinions before he joins the fire brigade. And our Democratic friends who realize as we realize the gravity, the far-reaching consequences of this campaign, ought not to ask the Republican party to reorganize itself; or to put aside any of the great principles it has advocated, in order to win Democratic votes. If this opinion is sincerely held, as they insist and as I believe, it ought to determine their action without reference to what anybody else may do. And I submit to these gentlemen, for whose opinions I have the highest respect, whether, if it be true, as they say, that the success of the Chicago nominee would plunge this country into irretrievable commercial distress and drag the nation's honor in the dust, there can be any question for them but this: "How can we most surely defeat the Chicago nominee?"

Neither conventions nor committees can create

issues, nor assign them their places in a campaign. That is the leading issue of a campaign which most agitates and most interests the people. In my opinion there is no issue presented by the Chicago convention more important and vital than the issue raised as to the powers and duties of the national courts and the national executive. The defense of the constitution, of the integrity of the supreme court of the United States, and of the president's power and duty to enforce all of the laws of the United States without awaiting the call or the consent of the governor of any state, has again become an important and living issue. Tariff and coinage laws will be of little moment if our constitutional government is overthrown. When we have a president who believes that it is neither his right nor his duty to see that the mail trains are not obstructed and that interstate commerce has its free way, irrespective of state lines, and courts that fear to use their ancient and familiar powers to restrain and punish law-breakers, free trade and free silver will be appropriate accompaniments of such an administration, and can not add appreciably to the national distress or the national dishonor.

There is only one rule by which we can live usefully as a nation or peacefully as citizens. It is the rule of the laws, constitutionally enacted and finally interpreted by the judicial tribunal appointed by the constitution. When it becomes the rule that vio-

lence carries its end, we have anarchy—a condition as destructive to honest labor and its rewards as death is to the tissues of the human body.

The atmosphere of the Chicago convention was surcharged with the spirit of revolution. Its platform was carried, and its nominations made with accompanying incidents of frenzy that startled the onlookers and amazed the country. The courts and the president were arraigned for enforcing the laws, and government by the mob was given the preference over government by the law enforced by court decrees and by executive orders. The spirit that exhibited itself in this convention was so wild and fierce that Mr. Bryan likened it to the fiery zeal that possessed the crusaders who responded to the impassioned appeals of Peter the Hermit to rescue the sepulcher of our Lord from the hands of the infidels. His historical illustration was more apt then he knew, for the zeal of the crusaders was a blind and ignorant zeal; they sought to rescue the transient and ineffectual sepulcher that had held the body of the Son of God, while they trampled upon the precepts of love and mercy which He had left for their guidance in life. He tells us further that this silver crusade has arrayed father against son, and brother against brother, and has sundered the tenderest ties of love. Senator Hill, watching the strange proceedings, had to extend that brief political creed from which he has gained so much renown. He felt compelled to

say: "I am a Democrat, but I am not a revolutionist." Senator Vest, realizing that they were inaugurating a revolution, reminded the convention that revolutions did not begin with the rich and prosperous. Mr. Tillman felt that the change in the management of public affairs was to be so radical that he proposed sulphur fumigation for the ship before the new crew took possession of it.

Now, my friends, all these things indicate the temper in which the platform was adopted and the nominations made. There was no calm deliberation. There was frenzy. There was no thoughtful searching for the man who, from experience, was most able to direct public affairs. There was an impulsive response to an impassioned speech. Not amid such surroundings as these, not under such influences, are those calm, discreet things done that will commend themselves to the judgment of the American people. They denounce in their platform interference by federal authority in local affairs as a violation of the constitution of the United States and a crime against free institutions. Mr. Tillman, in his speech, applied this declaration. It was intended to be a direct condemnation of Mr. Cleveland, as president of the United States, for using the power of the executive to brush out of the way every obstacle to the free passage of the mail trains of the United States and of interstate commerce. My friends, whenever our people elect a president who believes

that he must ask of Governor Altgeld, or of any governor of any state, permission to enforce the laws of the United States we have surrendered the victory the boys won in 1861.

In 1861 the question was raised whether the United States could pass its troops through Kentucky to meet a rebel army in Tennessee. We were four years in settling the question fully—but it was settled forever. My friends, this division of powers between the general and local authorities is a plain and easy one. A disturbance which is purely local in a state is a state affair. The president can not send troops or lend any aid unless the legislature calls upon him for help, or the governor, if the legislature is not in session. But when a law of the United States is resisted, it is the sworn duty of the president to execute it; and this convention arraigns the president for doing what his oath compelled him to do. Comrades of the war for the Union, sons of those that went out to battle that the flag might not lose its luster, will you consent, after these years, that the doctrine that was shot to death in the great war shall be revived and made victorious in a civil campaign?

But this assault does not end there. The supreme court of the United States and the lower federal courts are arraigned because they use the familiar writ of injunction to suppress violence, to restrain men from breaking the law; and that platform plain-

ly means—I will show you that it was so understood in the committee on resolutions—that when the supreme court, exercising its constitutional power and duty, gives an interpretation to a law of the United States that is not pleasing to congress, they will increase the number of judges and pack the court to get a decision to please them.

Our fathers who framed this government divided its great powers between three great departments—the legislative, the executive and the judicial. They sought to make these independent, the one of the other, so that neither might overshadow or destroy the other. The supreme court, the most dignified judicial body in the world, was appointed to interpret the laws and the constitution, and when that court pronounces a decree upon any constitutional question, there is but one right method, if we disagree, to overturn the decree, and that is the method pointed out by the constitution, to amend it to conform to the views of the people. Mr. Hill said in his convention speech as to this assault upon the court: "That provision, if it means anything, means that it is the duty of congress to reconstruct the supreme court of the country. It means"—and now note his words—"and it was openly avowed that it means the adding of additional members to it or the turning out of office and reconstructing the whole court. I will not follow any such revolutionary step as that."

You are to answer, then, my fellow-citizens, in all the gravity of a great crisis, whether you will sustain a party that proposes to destroy the balance which our fathers instituted in our system of government and to inaugurate the policy that whenever a tumultuous congress disagrees with the supreme court and a subservient president is in the White House, the judgment of the court shall be reconsidered and reversed by increasing the number of judges and packing the court with men who will decide as congress wants them to. I can not exaggerate the danger of this assault upon our constitutional form of government. One of the kindest and most discriminating critics who ever wrote with a foreign pen about American affairs, Mr. Bryce, in his "American Commonwealth," pointed out the danger growing out of the fact that the constitution did not fix the number of the supreme court judges, and that it was possible for a reckless congress and a reckless executive to subordinate and practically destroy the supreme court by the process I have just described. After speaking of this he says: "What prevents such assaults on the fundamental law? Nothing but the fear of the people, whose broad, good sense and attachment to the principles of the constitution may be generally relied upon to condemn such a perversion of its powers."

Our English friend did not misjudge us, I think. The sound, good sense of the American people,

when an issue like this is presented, can be depended upon to save the courts from the threatened destruction. The question is—whether Mr. Bryan's view or Mr. Tillman's view of a constitutional question shall prevail, or that of the august tribunal appointed by the constitution to settle it. The courts are the defense of the weak. The rich and powerful have other resources, but the poor have not. A high-minded, independent judiciary that will hew to the line on questions between wealth and labor, between the rich and the poor, is the defense and security of the defenseless.

I do not intend to spend any time in the discussion of the tariff question. That debate has been won and need not be protracted.

It might have run on eternally upon theoretical lines. We had some experiences, but they were historically remote, and so not very instructive to this generation. We needed an experience of our own, and we have had it. It has been a hard lesson, but a very convincing one, and everybody was in the school-house when it was given. Mr. Depew, whose absolute accuracy and verity when he tells a story you all know, in telling that story of our talk on the White House steps, did an unintentional injury to my modesty. I did not say or for a moment suppose that any influence or act of mine had lifted the tide of American prosperity to a mark on the stone higher than any other flood record. The Republican

policies were the lifting forces. As I have more than once said, it is a conflict of policies, not of men. And in this tariff debate, if it is to go on, we have history so fresh and recent, history so indelibly written on the hearts and minds of our people, that certain things must be admitted, and among those things is this historical fact that in 1892 we had the most prosperous times, the most general diffusion of prosperity, and the highest mark of prosperity that we have ever attained as a nation.

Now what has happened since? Then our business prosperity was like the strong current of a mighty river flowing bank full; now it is like a failing spring in an August drought. A panic in 1893 of a most extraordinary character has been succeeded by a gradual drying up less and less and less, until universal business distraction and anxiety prevail in all our communities. I do not believe there has ever been a time, except perhaps in the very stress of some active panic, when watchfulness even to the point of desperation has so characterized this great metropolis as it does to-day. Men have been afraid to go away for a vacation. They have felt that they must every day in this burning heat come into the city and watch their business. That is the situation.

What has brought it about? Gentlemen, who is there to defend the Wilson tariff bill? Who says it is a good tariff measure? I do not believe a

Democrat can be found to say that it is. Mr. Cleveland repudiated it. It was so bad that he would not attach his official signature to it, and it became a law without it. He said it was full of incongruities and inequalities. And yet it was a better one than he wanted to give us. What has been the result of that measure? When, two years ago, during the Morton campaign in New York, I discussed this question, I said that the old Democratic doctrine was that the burden of our public expenses should be laid upon importations, that the tariff should provide for the cost of running our government, and I pointed out then how our Democratic friends had left that platform and were now endeavoring to obtain revenue by internal taxation rather than to allow the support of the government to fall upon the importations of foreign goods. What has been the result? One of these experiments in internal taxation, the income tax, was held to be unconstitutional by the supreme court.

So eager were our Democratic friends to put directly upon our people, according to the English system, taxes to support our government, that they passed an unconstitutional act in order to levy internal taxes and help out a tariff bill which had reduced the duties upon imports. Now, what has been the effect of that? The Wilson bill has failed to produce revenue enough, supplemented by our internal taxes, to maintain the government. There has been

an annual deficit approaching $50,000,000, and the national treasury has been continually in a state of embarrassment. Our manufacturers, left without adequate protection, have been successively and gradually closing up and putting out their fires. But not only has it produced this effect, it has directly and strongly contributed to the financial depression that we are in. The maintenance of the gold reserve at $100,000,000 by the government for the redemption of our notes is essential to confidence in the stability of our finances. When the government reserve runs down people begin at once to say: "We may come to a silver basis; gold is going out; the reserve is going down."

But how can you keep a gold reserve of $100,000,000 when you have not got $100,000,000 in the treasury all told? How can you maintain the gold reserve when you have an annual and continual deficit in your income?

So that, my friends, this tariff bill has not only contributed by increasing importation, by taking away needful support from our own manufacturers, but it has contributed by increasing the silver scare to bring us into the condition of distrust and dismay which now prevails. The bond sales have been made necessary by reason of this deficit. It is one thing when you have a good surplus in the treasury to keep up the gold reserve, and quite another when you have no surplus at all.

But I do not intend to follow the tariff question further. I am quite as much, however, opposed to cheapening the American workingman and workingwoman as I am to cheapening our dollars. I am quite as strongly in favor of keeping day's work at home as gold dollars. If it could be known to-night that that gallant soldier, that typical young American, that distinguished and useful statesman, William McKinley of Ohio, would certainly be elected president, how the bears would take to cover on the stock exchange to-morrow!

My friends, as a Republican I am proud of many things, but I can sum up as the highest satisfaction I have had in the party and its career that the prospect of Republican success never did disturb business.

In connection with this financial matter, do we all realize how important the choice of a president is? Do you know that as the law is now, without the passage of any free coinage law at all, it is in the power of the president of the United States to bring the business of this country to a silver basis? All he has to do is to let the gold reserve go, to pay out silver when men ask for gold, and we are there already. It is only because the presidents of the United States that we have had, and the one we have now, have regarded it under the law as their public duty to maintain that parity between our gold and silver coins which the law declares is the policy of the government, and because they have had the courage to

execute the powers given to them by the resumption act to carry out that declaration of public law, that we are not now on a silver basis. I undertake, therefore, to say that if Mr. Bryan or a man holding his views were in the presidential chair, without any legislation by congress we should be on a silver basis in a week's time.

Three or four years ago, when I was in New York, one of those reporters who hear things that are not intended for them, got hold of a remark of mine about the wild horses that Mr. Cleveland had to handle. I simply meant by that what has been since demonstrated, that he did not have a compact or solidified party behind him; that the Democratic party in congress represented every shade of "ism" that had ever been produced in the country, and that he could not get on with it. My prophecy has become a verity. They abandoned him, and now, as that caution was meant to indicate that we needed to look out for congress as well as our president, this caution is intended to show you at this time that we need to look after our president if we would avoid the calamity of having this country put upon the Mexican basis of money.

The silver question—what is it? Do we want silver because we want more money, a larger circulating medium? I have not heard anybody say so. Mr. Bryan is not urging it upon that basis. If anybody were to give that as a reason for wanting free sil-

ver, he would be very soon confounded by the fact that free silver would put more gold out of circulation than the mints of the United States could possibly bring in in years of silver, and that instead of having more money, we should have less. Our six hundred and odd millions of gold driven out of circulation will reduce the per capita money of this country between $8 and $9. So it is not for more money. We have an abundant supply of circulating medium—gold, silver, national bank paper, greenbacks, treasury notes, fractional silver. We have something like $23 per capita of our population. What is it, then, that creates the demand for free silver? It is openly avowed it is not more dollars, but cheaper dollars, that are wanted. It is a lower standard of value that they are demanding. They say gold has gone up until it has ceased to be a proper standard of values, and they want silver. But how do they want it? Now, my friends, there is a great deal of talk about bimetallism and the double standard, and a great deal of confusion in the use of these terms. Bimetallism is the use of the two metals as money. By a double standard we mean that we shall have a gold dollar and a silver dollar which shall be units of value by which all property and all wages and everything is to be measured. Now, our fathers thought that when they used these two metals in coinage as money units—a double standard—they must determine the intrinsic relative

value of the two. That a comparison of the markets of the world would show just what relation one ounce of silver bore to one ounce of gold; how many ounces of silver it took to be equal to one ounce of gold, and they carefully went about ascertaining that ratio. Thomas Jefferson and Alexander Hamilton gave their great powers to the determination of that question. They collected the market reports and when they had found what appeared to be the general and average relative value of the two metals they fixed upon a ratio between them.

Now, what was the object of all that? Why did they not "lump" it? Because they fully understood that unless these dollars were of the same intrinsic value both of them could not be standards of value and both could not circulate. Why, every boy knows that it is essential that the length of his stilts below the tread shall be the same. What is the law that governs here? It is just this simple law of human selfishness and self-protection that if you have two things either of which will pay a debt and one is not as valuable as the other, you are sure to give the less valuable one. It is upon the principle that a man who can pay a debt with one dollar won't give two—precisely that. So that unless these two units maintain approximately the relative value assigned to them in coinage, so that sixteen ounces of silver is worth one ounce of gold, you can not make such dollars circulate together. The one that is the

more valuable the man will keep in his pocket, or he will sell it to a bullion broker, and everybody will use the other. It is an old law, proclaimed years ago in England by Gresham, that the cheaper dollar drives the better one out. It has been illustrated in our history repeatedly. It has been illustrated in the history of every commercial nation in the world, and everybody can see why it is so. You might just as well say that if we had two kinds of bushels, if the law should declare that sixty pounds of wheat was a bushel and thirty pounds of wheat was a bushel—that the farmer would deliver wheat by the sixty-pound measure.

Now, so nice were our fathers about this adjustment that they went into decimal fractions. We say 16 to 1. In fact, that is not the ratio. It is 15.988 plus. It is so near 16 that we call it 16, but the men who made our silver dollar and our gold dollar were so nice in their calculations that they went into decimal fractions, into thousandths, to adjust accurately the coinage to the commercial ratio. Now, what do these people propose to do? To take any account of thousandths? No. When the markets of the world fix the relative value of silver and gold at thirty or thirty-one ounces of silver to one ounce of gold, they propose to say sixteen. Well, my friends, there has been nothing more amusing—and yet I fear that with the thoughtless it may have been in some measure misleading—than the repeated dec-

laration of Mr. Bryan that everybody admitted that bimetallism was a good thing—there is no debate on that subject—and that the debate of the campaign has come down to this fine point: "The Republicans say that we can not have this good thing without the consent of England, and we say we can have it ourselves," and he has endeavored to pivot this great campaign with its tremendous issues upon that pin point.

We hear a great deal about the great resources and wealth and power of this country, and I do not allow anybody to go beyond my appreciation of them; but what is the use of talking about all that when you do not propose to put this wealth and power and influence behind the silver dollar at all. As things are now, the silver dollars that we have are supported by the government; its wealth and its pledge are behind them. The government has issued these dollars on its own account—not for the mine owner—and it has pledged its sacred honor that it would make every one of them as good as a gold dollar. And that is a powerful support. Without it, disparity between these two metals would at once show itself in the markets. There would be some reason in the talk which our Populistic friends indulge in when they speak of the power of this government, if they proposed to put this power behind their free coinage. But they do not. They propose that the men who dig silver out of the mines may

bring it to the mint and have it stamped and handed back to them as a dollar, the government having no responsibility about it.

These men would reject with contempt the proposition that free coinage should come with a pledge on behalf of the government to maintain the parity of the two dollars. But this appeal is well adapted to touch our American bumptiousness, and well adapted to touch that prejudice against England which many people have. But can we do this thing ourselves? Is it a question whether we will do it, or wait somebody's consent? Not at all.

I will tell you what this government can do alone. It can fix its money unit. It can declare by law what shall be the relative value of an ounce of gold and an ounce of silver, but it can not make that last declaration good. It is unquestionably fully within the power of the government to bring this country to a silver basis by coining silver dollars and making them legal tender. This government can say you shall take these dollars in discharge of any debt owing to you, notwithstanding you may have loaned gold dollars; but it can not say, and enforce its decree, if it should call out the regular army and navy and muster all our great modern ships and add the militia, and put William J. Bryan in command of them—it can not enforce the decree that one ounce of gold is the equivalent of sixteen ounces of silver. Not only that, not France and England and Germany can do that

unless the markets respond. Why? You may make me take a silver dollar for a debt, but you can not make me give as many yards of cloth for a silver dollar as I have been in the habit of giving for a gold one.

If I have a gold dollar in this hand and a silver one in that, and you declare they are equal, and I can take the gold dollar to a bullion broker and get two silver dollars for it, I know it is a lie. If I have nothing but a gold dollar, I will not give that gold dollar for twenty pounds of sugar. I will take it to a broker and get two silver dollars for it, get the twenty pounds of sugar and have one silver dollar left. So it is, my friends. We can of ourselves, of our own wisdom, declare the unit of value. We can coin silver freely, but we can not make sixteen ounces of silver equal to one ounce of gold unless it is. And it is not unless the merchants take it at that rate. It is trade; it is the merchant; it is the man who exchanges and deals in these things who fixes the relative value, and if you do not adopt in coinage the value he fixes, the gold dollar will go out of circulation.

What is another consequence? In this connection these gentlemen say, "Why! didn't we win the battle of Bunker Hill? Didn't we whip the British at Yorktown? And do you mean to say we can't do it again?" The logic of these gentlemen—if I may use such a term in connection with such balder-

dash—is that a nation that can do these great things and establish its political independence can also be financially and commercially free. It can not be free of the laws of trade. You can say that ten muskrat skins are equal to ten beaver skins, but that does not make it so; the fur trader is stronger than congress in settling that question.

The free coinage of silver now is the financial and moral equivalent of a declaration that fifty-cent pieces are dollars. They might just as well pass a law that half dollars are dollars. That would not make it so, would it? It would be a legal dollar, but it would not buy a dollar's worth of anything. The merchant would take care of himself. A man keeps a store down here on Broadway, and that law is going into operation to-morrow. He summons all his clerks, buys twenty-five cents' worth of pencils, and before he opens his store in the morning he has marked up his goods to the new scale. He can do that. But there are great numbers of people who enlist our interest, and some of them enkindle our sympathies, who can not use the pencil. Take the workingman. He can not go to the pay-roll with a pencil and mark it up. He has got to consult somebody. He has to enter into an agreement. He must get another man's consent before he can mark up his wages. Then there is the pensioner, those that are receiving pensions from this government for gallant deeds done in the war, or for the loss of loved

ones. They can not take their pension certificates, and where they read $8 make them read $16. They must wait for an appeal to congress, and a congress that is Populistic in character would be unsympathetic, I fear.

What can the depositors in our savings banks, this great company of widows and orphans, the people of small means, who are putting by a few pennies daily against a hard time in life, what can they do when this change comes? Can they take their bank passbook and where it says $10 write $20? Not at all. Take the men who have life insurance —a man who has providently taken out a policy that his widow and children might not come to want when the bread-winning hand was stricken in death —can they, where the policy reads $5,000, make it $10,000? No.

Can the managers of these institutions make it right with them? No. This policy coerces integrity. However honest a president of a savings bank may be, however full of sympathy the president of a life association may be, he is compelled to say: "All of the loans of this company are scaled down to fifty-cent dollars. We loaned dollars that were worth one hundred cents; we are now being paid in the reduced dollar. Although our integrity revolts against it, our honesty is coerced and we must pay the widow one half."

My friends, these men surely do not contemplate

the irretrievable and extensive character of the disaster, disturbance and disruption which they are proposing for all of us in all our business affairs, great and small. Take the laboring man; how full of sympathy they are for him. My countrymen, I never spoke a false word to the laboring man in my life. I have never sought to reach his vote or influence by appeals to that part of his nature that lies below his intellect and his conscience. I have believed, and I believe to-day, that any system that maintains the prices of labor in this country, that brings hope into the life of the laboring man, that enables him to put by that which gives him a stake in good order, in the property of the country, is the policy that should be ours, is the true American policy. I have resisted in many campaigns this idea that a debased currency can help the workingman. The first dirty errand that a dirty dollar does is to cheat the workingman.

My. friends, a cold, statistical inquiry, non-partisan in its character, was made by a committee of the Senate in 1890 and some following years. The committee was composed of Democrats and of Republicans, and they set out to study as statisticians the relative prices of commodities and wages at different periods in the history of our country. This investigation covered the years of the war when we had a depreciated currency. It showed how prices of goods went up and in what proportion labor ad-

vanced. Goods went up rapidly, because the pencil process is a quick process. Wages went up haltingly and slowly, because the employer had to be persuaded and the pencil wouldn't serve. Now, I have here somewhere a memorandum of some of those facts resulting from that investigation. Labor in one period advanced 3 per cent. Goods, the things the man had to buy out of his wages for his family and his living, advanced 18 per cent. Through another period the laborer's wages advanced 10 1-2 per cent. and the price of goods advanced 49 per cent. In another period the wages of the laborer went up 25 per cent. and the price of merchandise advanced 90 per cent. In another period the laborer's wages went up 43 per cent. and the prices of goods 117 per cent. Now, these statistics are the result of a cold, scientific inquiry made by men of both parties to determine what the truth was, and the truth they found was an enormous disparity between the advance of the cost of living and the advance of wages. Laborers, men who work, whether with head or hand, would do well to take these facts to heart and settle the question after that broad, deep inquiry to which Mr. Bryan invites them, as to whether they want to enter into another experience such as they had during the war, when wages advanced so slowly and tediously, and the cost of their living moved up so swiftly.

I have sketched very hastily some of the evils that

will result from this change to a debased dollar—a contraction of our currency by the exporting of our gold and a readjustment of everything. I read the other day in a paper a most amusing description of the troubles of the ticket agent at Laredo, a station on the Mexican railway, who had to sell tickets to people who came from the United States with United States money, going into Mexico, and to people who came out of Mexico and who offered him Mexican money. He had a large book bound of yellow scratch paper, and he had to cover one whole sheet in his calculation usually when he sold a ticket. That is what would happen everywhere. Everything would have to be readjusted, the whole business of the country would have to be readjusted, and while that process was going on uncertainty would characterize business, resulting in panic and disaster.

Now, who will get any benefit? Well, the man who owes a debt that he contracted upon a gold basis and is able to pay it with a fifty-cent dollar. He and the mine owner, who gets an exaggerated price for the products of his mine, are the only two people, or classes of people, that I can see that would have any benefit out of it. My friends, the people who advocate this class legislation, this legislation favorable to the mine owners, and who offer this temptation of repudiation to the debtor class, are members of the party that has for thirty years been declaiming against class legislation.

They make a strong appeal to the farmer. They say it will put up prices. Well, in a sense, yes. Nominally, yes. Really, no. If wheat goes from fifty cents to $1, the price has been increased, you will say; but if the price of everything else has gone up in the same proportion a bushel of wheat won't buy for the farmer any more sugar or coffee, or farming implements, or anything else that he has to purchase. If that dollar won't buy for the farmer any more than the one he has now, where is the good to anybody of introducing these fictitious prices? It would work very well for the farmer if the prices of wheat, hay, oats and rye would double and nothing else would double, but if everything doubles, who is the richer? Only the man who bought when we had an honest dollar and paid in a debased one; only the mine owner who uses this government to add fifty cents, more or less, to the value of every dollar's worth of metal that he produces from his mine.

My countrymen, this country of ours during the troublous times of the war had severe trials, but these financial questions are scarcely less troublous than those. During those times we had accumulated a debt so large that many of our pessimistic Democratic friends told us we could never pay it. We had a currency which we were compelled to make a legal tender that the constitution might live. But no sooner had the war ended than the great conscience

of this people declared that the nation that had crushed the great rebellion, that had lifted itself to a peerless position among the nations of the earth, should not continue to have a depreciated currency.

We resumed, and we made our greenback dollar a par dollar in gold. Shall we now in these times, when all the ills we suffer are curable if we will pass a revenue bill that will generously replenish the treasury of the United States, that will generously protect American labor against injurious competition and bring back again full prosperity to all our people—shall we now contemplate for a moment or allow to have any power over our hearts and minds this temptation to debase our currency and put our country financially alongside the Asiatic countries? Does not every instinct of national pride, does not every instinct of self-interest, does not our thoughtful interest in others, does not our sense of justice and honor rise up to rebuke the infamous proposition that this government and its people shall become a nation and a people that debases its currency to make debt-paying more easy?

# COMPULSORY DISHONESTY

**The Forum, October, 1896**

Before smokeless powder was invented, an army was sometimes wrapped in the black gases belched from its own guns. Its soldiers were, in some respects, safer than when the air was clear, but the effectiveness of its guns was greatly lessened. The silver orators do not use smokeless powder, and, though the great political battle has only begun, the air is already thick. Let us go to a hilltop, or a tree top, and see if we can not trace the lines—at a few points.

The free-silver leaders do not seem to me to deny what their opponents assert—namely, that the free coinage of silver at the ratio of 16 to 1 will, if the relative commercial value of gold and silver remains unchanged, wipe out about one-half of every existing promise to pay money; that every promissory note, bond, savings deposit, bank deposit, building association certificate, life insurance policy, pension, salary and wage contract will be affected precisely as if the note, bond, certificate, deposit book, contract or pen-

sion certificate had been surrendered for a new one in which was written one-half the amount of the old. "How much owest thou unto my lord?" And he said, "A hundred measures of oil." And he said unto him, "Take thy bill, and sit down quickly, and write fifty."

A Northwestern senator told me, when the silver debate was on in the senate in 1890-91, that a Southern senator had said to him, "I do not want you to think that I am a fool. I know that the free coinage of silver will scale the debts that my people owe—and that's what we want. We are poor and in debt." The senator thus addressed replied, "Well I think you have saved your intellectual integrity, but at the cost of your moral integrity." When Senator Hill, of New York, in the Chicago convention, pressed this objection to free coinage, and Senator Vilas, of Wisconsin, declared that free coinage was robbery, Mr. Bryan, in a speech that won him the nomination for the presidency, had only this to say in reply:

"But if he means to say that we can not change our monetary system without protecting those who have loaned money before the change was made, I want to ask him where, in law or in morals, he can find authority for not protecting the debtors when the act of 1873 was passed, but now insists that we must protect the creditor?"

Senator Hill offered an amendment to the plat-

form to carry out his thought—that when the United States degraded its coined dollars, their legal-tender quality should not extend to existing contracts. Some of the newspapers reported that the resolution was adopted unanimously; but that must have been a mistake, unless the convention in the confusion failed to understand the question. I have not seen an official copy of the platform, but it is understood that the presiding officer declares that Senator Hill's amendment was rejected. It would have taken the soul out of the free-silver campaign; and, so far from offering the relief that Mr. Bryan promises to the farmer-debtor, would require him to buy gold at an enormous premium to pay his debt, while he sold his products for silver.

The quotation I have made from Mr. Bryan's convention speech—and every other speech that I have seen—seems to me to affirm the legal and moral right of the United States to degrade its money standard, to pay its obligations in the debased coin, and to give to its citizens the right to discharge their debts in the same way. He meets the champion of the doctrine that the dollar of payment should be as good as the dollar borrowed, with a general denial and a counter-claim. The counter-claim is presented in behalf of the debtors of 1873—who, he intimates, were injured by the dropping of the silver dollar from our coinage in that year.

It is the supposed injury to the debtors of 1873

that he proposes to recoup from the creditors of 1896. He takes no account of the fact that the debtor and creditor classes are not fixed classes in this country; that the debtor of 1873 may be the creditor of 1896; and that the counter-claim pleaded in behalf of the debtors of 1873 would be levied on their own goods in considerable part, and be paid to the men who are supposed to have despoiled them in 1873. About the only bond that runs twenty-five years are railroad and other corporate bonds. Farm mortgages rarely run more than five years. The railroads, the banks, the large corporations, and the United States are the great debtors of 1873, who are still in the debtor class; and among their creditors are the thrifty poor, the widow, the orphan, and the disabled veteran. The proposition is that these great debtors shall now be permitted to discharge their obligations in dollars worth one-half of the dollars now in use. I must qualify that statement: it is not that they shall be permited, but *compelled*, to pay in the debased dollar. Dishonesty is not made optional but compulsory; for, while the United States must receive its taxes and customs dues, and the banks their loans, in the new dollar, they can not pay in the old. And, more than all this, we are promised legislation that shall prohibit us from promising to pay in gold the gold we have borrowed. If the debtor is too honest to set up the defense, I suppose the court will

be required to appoint a guardian *ad litem* to file the plea for him!

Only one chance of escape is offered to us from the conclusion that one of the great historical parties of the country is now making a campaign for the repudiation of one-half of all the indebtedness of the country—national, corporate and individual—and that is found in the suggestion that free coinage will raise the value of silver sufficiently to make the silver dollar the commercial equivalent of the gold dollar. This suggestion was put forth when Mr. Bryan was, in some measure, under the influence of that conservative sense of responsibility which is usually felt by the man who is proposed for the greatest office instituted by the constitution. But it is not a proposition upon which the free-silver advocates agree, I think. It is not put to the front of the campaign—it was not so well thought of as to appear in the platform, either as a probable result of free coinage, or even as a thing to be desired. To borrow an illustration from S. S. Prentiss, Mr. Bryan uses the suggestion—that silver will rise to a parity with gold—as a heavy bird of flight uses the limb of a dead tree for a perch—the bird keeps its wings extended and in gentle motion while it tries the strength of the limb. I have not observed that Mr. Bryan has much argued the point. Indeed, he has been sharply taken to task by friends for making it. It destroys the whole silver program. They say that

gold has appreciated; that the gap between the silver and the gold dollar has been wholly caused by the rise in the value of the gold dollar; that the silver dollar is, therefore, the old and true measure of values. Now, if free coinage will lift the value of sixteen ounces of silver to the present value of one ounce of gold, silver will then be as obnoxious as gold. The whole scheme will fail—for the scheme is to keep silver where it is. Gold, they say, created the disparity by going up; and, if equality is again to be established, gold must abandon its giddy flight and come down to its heavy and conservative sister. They see that a proposition to degrade the gold dollar, by the use of an alloy, to the present bullion value of the silver dollar would be a proposition too raw for the palates of the people. So they let gold go—as Mr. Bryan said, they will neither give nor ask quarter in the fight against it. By the free coinage of silver at the present ratio gold will be banished from our currency and from our country—for no man will be fool enough to give a gold dollar for what a silver dollar will buy, when he can exchange his gold dollar for two silver ones; and no dollar that is at a premium—that is worth more than its face—will circulate as money.

But it is not true, as Mr. Bryan seems to intimate, that the law of 1873 changed our money standard to the injury of the debtor class. The silver dollar was dropped from our coinage, but it was not then

a cheap dollar, but a par dollar—the 371 1-4 grains of pure silver contained in it were the full equivalent, as bullion, of the 23.22 grains of pure gold contained in the gold dollar. The recent treasury department circular (No. 123) shows that the average bullion value of 371 1-4 grains of pure silver during the year 1873 was $1.004; that is, the commercial ratio between silver and gold was 15.92 to 1, while our coinage ration was 15.9884 to 1. It is not fair, then, to liken the change in our coinage laws made in 1873 to that now proposed. The former involved neither dishonesty nor oppression. The dollar that was dropped and the dollar that was retained were commercial, as well as legal, equivalents; and the change did not favor the creditor class nor injure the debtor class. There had been coined from the beginning of the government up to 1873 only 8,031,238 silver dollars; and if we may indulge the impossible suggestion that all these dollars were in circulation in 1873, the debtors then had only 8 million silver dollars to use in paying their debts, while now they have more than 438 millions of full legal-tender silver dollars to use in that way.

In order to make good the charge that the law of 1873 wrought the injuries imputed to it, the assertion is made that the gold dollar has appreciated—gone up. And how do they set about proving that gold has gone up? Condensed, the argument is this: It takes more wheat to get a gold dollar than

formerly, and, therefore the gold dollar has gone up. But the deduction from that premise is in the alternative—either gold has gone up or wheat has gone down. Commonly, we would say wheat is lower, and would seek the explanation in a large general crop or in diminished consumption. We know that these things do affect the price of wheat and will continue to do so under free silver coinage. Drought and rust and the cinch bug, a full European crop, the increasing output of Russia, India and Argentina, closed American mills, and enforced economy in the homes of American workmen—these things always have affected and always will affect the price of wheat. Another thing to be taken into account in this connection is the production of gold—for if a large wheat crop means, commonly, a lower price, so a large crop of gold must mean a lower value for gold. The world's production of gold in 1873 was $96,200,000, and only in two years since then has it fallen below that figure. All other years show an increase and the last five years a steady and enormous increase. In 1894 the production was $180,626,100, and the product for 1895 is estimated at $203,000,000. The production of silver has increased from $81,800,000 (coining value) in 1873 to $216,892,200 in 1894, and is estimated at $226,000,000 for 1895. Or, to state the production in fine ounces, gold has increased from 4,653,675 ounces in 1873 to 9,820,125 ounces in 1895, and silver from 63,267,-

187 ounces in 1873 to 174,796,875 ounces in 1895. In view of these considerations and of these figures as to production, who is wise enough to say that gold has gone up or silver down, or how much either metal has varied? And yet it is assumed that the silver dollar has been a true and stable measure of value, that it has neither gone up nor gone down since 1873, and that it would be honest to return to that standard and settle all contracts by it. Now how is this to be proved? or do our silver friends think it worth while to prove anything?

This illustration, used by Mr. Bryan, is the only attempt at argument I have seen: If—he says—a man able to perform his contracts should offer to pay one dollar per bushel for all the wheat brought to him, would not the price of wheat go up to a dollar? But the United States is not to buy the silver—it only puts a stamp on it, and returns it to the owner. It is rather as if a miller should offer to take all the wheat brought to him, to grind it into flour without charge, to put each one hundred pounds of the flour into a barrel, to stamp on the head of it "this is a barrel of flour," and to return it to the owner. How would the price of wheat, or of flour, be affected by that transaction?

There are many people, I suppose, who would scorn to take advantage of a law that allowed them to have a full discharge from their debts upon the payment of fifty cents on the dollar, but who do not

feel humiliated by the suggestion that they shall pay them with a coin called a dollar, but worth only fifty cents as compared with the dollar they borrowed. It is said to be the old dollar—the dollar of the constitution, and of the fathers, and they are beguiled. It is neither—the constitution does not require congress to coin silver dollars at the ratio of 16 to 1, or at any other ratio, or at all. It confers upon congress the power "to coin money, regulate the value thereof, and of foreign coin," and neither gold nor silver is anywhere mentioned in the constitution save in a section prohibiting the states from doing certain things, where it says: "No state shall * * * make anything but gold and silver coin a tender in payment of debts." It is not the old dollar, nor the dollar of our fathers; for their dollar was based upon the then existing commercial ratio between silver and gold. If it had been suggested to Hamilton or to Jefferson that while the commercial ratio between silver and gold was 31 to 1 we should coin silver dollars at the ratio of 16 to 1, they would have suggested the writ *de lunatico inquirendo*. They followed the commercial into three decimal numbers to find the coining ratio; and these claim to be their followers who say that the commercial ratio should be entirely disregarded. The former sought a ratio that would keep both dollars in circulation—the latter, one that gives gold to Europe and associates us with Asia.

But, in fact, there is no reason to believe that silver would appreciate as the result of free coinage, to a parity with gold at the present ratio. All that is guesswork—a guess not so much in the direction of the desires of the silver people, but to allay the fears of those who dread silver-monometallism, while desiring as large a use of silver as is consistent with the parity of our gold and silver dollars. Two of the leading free-silver senators, when the Sherman bill was pending, were, I know, much more positive than Mr. Bryan is now that the purchase by the government of 4,500,000 ounces of fine silver per month would take up the silver surplus that they said was weighing down the market price, and so make and keep our silver dollar at par with the gold dollar. The actual result was that 371 1-4 grains of pure silver—worth on the average in 1889 .724—advanced in 1890 to .926, and then declined each year until, in 1894, it reached the low limit of .457. Shall we trust these prophets again to our cost?

The demand for more legal-tender greenbacks in 1873 was the product of depressed commercial conditions, as is the present demand for free silver coinage; but the former was based upon the assumption that our per capita circulation was too low; that we did not have enough money. The latter is not based upon that assumption, but upon the assumption that the money we have is too good—not more dollars,

but cheaper dollars is the demand—not a silver dollar that will abide with the gold dollar, but one that will exile the gold dollar. What the red flag is to a bull, gold is to the free-silver advocates. It excites their rage; they want to gore and toss it.

Other nations that are upon a silver basis are struggling to be rid of the depression and trade disadvantages that it entails. A depreciated currency, with its always present tendency to fluctuations, is, whether judged by philosophy or history, a curse. No intelligent commercial people is now content to use such a currency—except under the severest necessity—nor to continue its use beyond the time of possible relief. It is easy to fall into the slough and hard to get out of it—but it is harder to remain in it. This great people will not consent to have a double standard—unless each money unit is the commercial equivalent of the other; and if they must have a single standard they will have the best.

# "NO MEAN CITY"

## A RESPONSE AT A DINNER GIVEN BY THE COMMERCIAL CLUB, INDIANAPOLIS, APRIL 21, 1897, AT WHICH HE WAS THE GUEST OF HONOR

"No mean city." The apostle Paul, when he used these words, was in the hands of a Roman guard that had come on the run to deliver him from a Jewish mob. The captain of the guard believed him to be the leader of a band of murderers, but he did not think that he should be lynched. Paul appealed for identification and for consideration to the fact that he was a native of Tarsus in Cilicia—a citizen of "no mean city." To be ashamed of the city you live in is a lesser sorrow than to have the city ashamed of you, but still a heavy sorrow. There is great comfort when a column of residence is to be filled, and a Boston hotel clerk is watching the evolution of the name, in not being put to any disguise or ambiguous abbreviations. Is there a greater triumph in life than to lift your eyes from the register to the arbiter of destinies on the other side of the counter and to see that his fear that you might

blow out the gas has been allayed? That Indianapolis is not an Indian reservation with a classical termination is now generally known in the Eastern states, and also by some of our English kin. It seems that our English cousins only acquire geography by conquest, and only recognize political subdivisions that they make themselves. The geography of lands to which they have lost title seems to go hard with them—as witness the recent inquiry of a high English prelate whether New England was a part of Massachusetts.

Paul used no superlatives in his reference to Tarsus; he reserved them for the city that hath foundations. He assumed that there was carrying force in the name itself; that the help of granulated adjectives was not needed—"no mean city." He left something to the captain's knowledge and imagination. He was proud of Tarsus; that is clear, and he was not a man to be satisfied with negations. The city had done something distinctively great, and I set out the other day, with the help of the encyclopedia, to see if I could find out what it was. I find in the first place that it was a great seat of learning. Its schools were of the highest excellence, and the fame of them was as wide as Greek and Roman scholarship. Strabo said they were superior to those of Athens and Alexandria. Paul was a man of letters, as well as of faith. He was a logician; a *non sequitur* was an abomination to him,

as it ought to be to a newspaper man. As he was proud of the schools of Tarsus, so we are of the schools of Indianapolis. It is "no mean city."

As the schools of Tarsus surpassed those of Athens, so our public schools, judged by most competent educational experts, are not surpassed by those of any city in the United States. But what part, my friends of the Commercial club, have you and I had in making our schools what they are? We have paid our school taxes with more or less cheerfulness—or with none at all. But has the Commercial club or the Board of Trade ever tendered a reception to the faithful men and women who have placed the city of our love upon a pedestal of honor? One of the oldest, most devoted and successful of our school workers recently said: "We rarely hear from the public save when some one wants to find a place on the pay-roll for a niece or a cousin." There are now, I am told, in our city, in addition to the truant class, 1,000 children for whom there are no school accommodations. A general tax for public schools implies a school roof and a school desk for every child, and they should be provided. The compulsory education law of the last legislature should be backed by a supporting public sentiment. We should have, not a listless, far-apart pride in our schools, but the pride of touch and participation. Our school board should know that while the Indianapolis public will tolerate no

filching, no self-seeking, no rings, it will stand by against all assaults that have their origin in self-interest, or in the egotistical assumption that the critic is infallible.

Tarsus was further celebrated for its magnificent roads, we are told. The "ships of the desert" that bore the products of the interior through the passes of the Taurus to the sea did not have their roll intensified by the right foot finding a hole and the left a hillock. The roads were favorable to an even keel. A city that you can not get to comfortably is a "mean city." And here we may raise the note of exultation an octave or two above that of Paul —though there may be a perceptible quaver when the memory of a drive to Irvington or Crown Hill sweeps over the choir. But our great railway system saves us. Where is there a city that offers such facilities of ingress and egress? They may not only come from the north and the east, the west and the south—but they may box the compass and still get here. If a man does not desire to go to any place in particular, but has a fancy to travel "sou' sou' west," or "east by south," we can furnish him a smooth road.

Tarsus was besides a free city, and the seat of an important commerce. These were, so far as I know, the special distinctions of Tarsus. No doubt there were others that history has not preserved. But the ideal city must have other excellences. It must be

a city where people diligently mind their own business, and the public business, and do both with a decent regard to the judgment and rights of other men; a city where there is no boss rule in anything; where all men are not brought to the measure of one man's mind, or to the heel of one man's will; a city whose citizens are brave and true and generous, and who care for their own; a city having the community spirit, but not the communistic spirit; where capital is respected, but has no temples; a city whose people live in homes, where there is room for a morning glory or a sweet pea; where fresh air is not delivered in pint cups; where the children can every day feel the spring of nature's green carpet; where people are not so numerous as to suggest that decimation might promote the general welfare; where brains and manners and not bank balances, give ratings to men; where there is neither flaunting wealth, nor envious poverty; where life is comfortable and toil honorable; where municipal reformers are not hysterical, but have the habit of keeping cool; where the broad judgment of a capital, and not the narrowness of the province, prevails; where the commerce in goods is great, but not greater than the exchanges of thought and of neighborly kindness. We have not realized all these things. We count not ourselves to have attained, but we follow after.

This is a commercial club; but, after you have ex-

hibited sites and statistics to the man seeking a business location, he will want to know about the homes, the schools, the churches, the social and literary clubs; whether it is a place where domestic life is convenient and enjoyable; where the social life is broad and hospitable, where vice is in restraint; where moral and physical sanitation have due provision, where charity is broad and wise—a city to which men will grow attached, to which they will come back.

Gentlemen, you may add these things to the trade statistics of Indianapolis. A city offering the most alluring inducements to commerce and production, it is pre-eminently a city of homes.

# "ABRAHAM LINCOLN"

**February 12, 1898**

AT THE LINCOLN DAY BANQUET OF THE MARQUETTE CLUB, CHICAGO

MR. CHAIRMAN AND GENTLEMEN—A few weeks ago, when the pressure of other engagements made it apparent that it would be impossible for me to make any preparation suitable to the dignity of this occasion, I withdrew a previous acceptance of the invitation of the club. But the committee, with quite an undue sense of the importance of my presence, arranged to facilitate my coming and going, and promised for themselves, and for you, so far as they were able, if I would come, to be content with but a few words from me to-night.

The observance of the birthday of Abraham Lincoln, which has become now so widely established, either by public law or by general custom, will more and more force the orators of these occasions to depart from the line of biography and incident and eulogy and to assume the duties of applying to pending public questions the principles illus-

trated in the life and taught in the public utterances of the man whose birth we commemorate.

And, after all, we may be sure that that great simple-hearted patriot would have wished it so. Flattery did not soothe the living ear of Lincoln. He was not unappreciative of friendship, not without ambition to be esteemed, but the overmastering and dominant thought of his life was to be useful to his country and to his countrymen.

On his way to take up the already stupendous work of the presidency, he spent a night at Indianapolis. The arrival of his train was greeted by many thousands of those who had supported his candidacy. They welcomed him with huzzas, as if they would give him token of their purpose to stand by the results declared at the polls. Yet it seemed to me hardly to be a glad crowd, and he not to be a glad man. There was no sense of culpability either in their hearts or in his; no faltering; no disposition to turn back, but the hour was shadowed with forebodings.

Men did not shrink, but there was that vague sense of apprehension, that unlocated expectancy of evil, which fills the air and disturbs the beasts of the field when the unclouded sun is eclipsed. When the column is once started in the charge there are cheers, but there is a moment when, standing at attention, silence is king.

Before us stood our chosen leader, the man who was to be our pilot through seas more stormy and

through channels more perilous than ever the old ship went before. He had piloted the lumbering flat-boat on our western streams, but he was now to take the helm of the great ship. His experience in public office had been brief, and not conspicuous. He had no general acquaintance with the people of the whole country. His large angular frame and face, his broad humor, his homely illustrations and simple ways, seemed to very many of his fellow-countrymen to portray a man and a mind that, while acute and powerful, had not that nice balance and touch of statecraft that the perilous way before us demanded. No college of arts had opened to his struggling youth; he had been born in a cabin and reared among the unlettered. He was a rail-splitter, a flatboatman, a country lawyer.

Yet in all these conditions and associations he was a leader—at the railsplitting, in the rapids, at the bar, in story-telling. He had a comparatively small body of admiring and attached friends. He had revealed himself in his debate with Douglas and in his New York speech as a man most familiar with American politics and a profound student of our institutions, but above all as a man of conscience—most kind in speech, and most placid in demeanor, yet disturbing the public peace by his insistence that those theories of human rights which we had all so much applauded in theory should be made practical.

In the broad common-sense way in which he did

small things he was larger than any situation in which life had placed him. Europe did not know him. To the South and to many in the Northern states he was an uncouth jester, an ambitious upstart, a reckless disturber. He was hated by the South, not only for his principles, but for himself. The son of the cavalier, the man who felt toil to be a stain, despised this son of the people, this child of toil. He was going to Washington to meet misgivings in his own party, and to confront the fiercest, most implacable and powerful rebellion of which history gives us an example. Personal dangers attended his journey. The course before him was lighted only by the lamp of duty; outside its radiance all was dark.

He seemed to me to be conscious of all this, to be weighted by it, but so strong was his sense of duty, so courageous his heart, so sure was he of his own high purposes and motives and of the favor of God for himself and his people, that he moved forward calmly to his appointed work; not with show and brag, neither with shrinking. He was yet in a large measure to win the confidence of men in his capacity, when the occasion was so exigent as to seem to call for one who had already won it.

As I have said at another time, the selection of Mr. Seward for secretary of state was a brave act, because Mr. Lincoln could not fail to know that for a time Mr. Seward would overshadow him in the

popular estimation, and a wise one, because Mr. Seward was in the highest degree qualified for the great and delicate duties of the office. A man who is endowed for the presidency will know how to be president in fact as well as in name, without any fussy self-assertion.

He was distinguished from the abolition leaders by the fairness and kindliness with which he judged the South and the slaveholder. He was opposed to human slavery, not because some masters were cruel, but upon reasons that kindness to the slave did not answer. "All men" included the black man. Liberty is the law of nature. The human enactment can not pass the limits of the state; God's law embraces creation.

Mr. Lincoln had faith in time, and time has justified his faith. If the panorama of the years from '61 to '65 could have been unrolled before the eyes of his countrymen would they have said, would he have said, that he was adequate for the great occasion? And yet as we look back over the story of the civil war he is revealed to us standing above all men of that epoch in his capacity and adaptation to the duties of the presidency.

It does not seem to be God's way to give men preparation and fitness and to reveal them until the hour strikes. Men must rise to the situation. The storage batteries that are to furnish the energy for

these great occasions God does not connect until the occasion comes.

The civil war called for a president who had faith in time, for his country as well as for himself; who could endure the impatience of others and bide his time. A man who could by a strong but restrained diplomatic correspondence hold off foreign intermeddlers and at the same time lay the sure basis for the Geneva award, a man who could in all his public utterances, while maintaining the authority of the law and the just rights of the national government, breathe an undertone of yearning for the misguided and the rebellious; a man who could hold the war and the policy of the government to its original purpose—the restoration of the states without the destruction of slavery—until public sentiment was ready to support a proclamation of emancipation; a man who could win and hold the love of the soldier and of the masses of the people; a man who could be just without pleasure in the severities of justice, who loved to forgive and pardon.

Mr. Lincoln loved the "plain people," out of whose ranks he came, but not with a class love. He never pandered to ignorance or sought applause by appeals to prejudice. The equality of men in rights and burdens, justice to all, a government by all the people, for all the people, was his thought—no favoritism in enactment or administration—the general good.

He had the love of the masses and he won it fairly, not by art or trick. He could, therefore, admonish and restrain with authority. He was a man who could speak to all men and be heard. Would there were more such! There is great need of men now who can be heard, both in the directors' meeting and in the labor assembly.

Qualities of heart and mind combined to make a man who has won the love of mankind. He is beloved. He stands like a great lighthouse to show the way of duty to all his countrymen and to send afar a beam of courage to those who beat against the winds. We do him reverence. We bless to-night the memory of Lincoln.

# AT THE BANQUET OF THE UNION LEAGUE CLUB, CHICAGO

February 22, 1898

Mr. President and Gentlemen of the Union League Club of Chicago—As much as I have talked, I do not love it, and if there was ever a time in my life when I talked for talk's sake I have left that time behind me. Whatever strength I have to talk which the excessive, superabundant and overflowing kindness of my fellow-citizens has given me, I feel under a conscientious obligation to use for my country. The work which this club has undertaken and from year to year so successfully executed is worthy of wide imitation. We are living in an age when great things crowd upon each other, when men's minds and hearts are full of those interests which pertain to themselves and their families. The struggle of life, and especially of business life, seems to be getting more and more intense with every year, and it is a worthy example which this club has set to these great business organizations throughout the country, to forget for this day all the rush and roar of pomp,

to close these great marts of trade, and to turn their thoughts and to engage the thought of the children with those things that pertain to our country.

My fellow-citizens, we have a country not simply under a bond of constitution that demands the fealty of every man, but we have much more—a country to which the hearts of all the people of the states are given.

We need to cultivate the sentiment of public duty, and in the life of Washington we have a record of a life that was devoted to it. We too much forget that we owe a public debt that we may not cast off. But, my countrymen, if we are to have peaceful times and prosperous times, if this government is not to become a prey to corruption, if it is not to unsettle from those great foundations on which our fathers placed it, there must be watchfulness and effort on the part of all our citizens. You have undertaken a good work in calling the attention of the children to the lessons of Washington's life. We are a great people in power. Let us be great in person, great in integrity of personal life, in that integrity of patriotism which makes men ready not only in time of war, when the drum-beat rouses our hearts to an impulse of patriotism to rush forward to death, but steadfast defenders in times of peace.

We stand now in the awful shadow of one of the most tragic events that has ever happened in our history, and yet we stand with the poise, with the self-

possession of a people who understand their might and can abide the developments of time. We are not a hysterical people. We can wait, and we will know our duty when it shall be revealed. We can understand that in a time like this there are grave responsibilities devolving upon the president of the United States, single responsibilities that he may not divide with any man. Let us stand about him, strengthening him in the calm assurance that this great country desires only what is right and can wait until the facts are known before it issues its proclamation.

I thank you for the great cordiality which you have shown me to-day. Twice within a week I have spoken in Chicago. You have so often asked me here that I thought to crowd my speeches a little so that I might satiate you. I thank you for your most kindly welcome, and in what I have said to-day I have endeavored to present to you what seemed to be the duties of a true, conscientious citizenship.

# PRESENTATION OF FLAG TO BATTERY A

**May 3, 1898**

AT CAMP MOUNT, INDIANAPOLIS

CAPTAIN CURTIS, MEN OF BATTERY A, INDIANA NATIONAL GUARD—soon to have another designation as a battery of the army of the United States.

Yesterday some of my young lady friends called upon me and asked me to say a few words in connection with the presentation to this battery of the flag which they had prepared. My engagements are such that I have been negativing all invitations to make public addresses, and I might have denied the ladies—though my desire to please them was very strong—but I could not deny myself the gratification of a word of greeting, of commendation, and a godspeed to you and to all the brave young fellows who have so promptly answered our country's call to war. The Indianapolis Light Artillery has won the highest laurels as a militia organization. You have vanquished all competitors, you have won fame for the state. As Indianians we are proud of you. You will take the field under the very best auspices.

Your officers and men have attained a high efficiency in drill. You have already a high *esprit de corps.* You have been first in peace. You must not, can not, will not, be second in war. You have attained great efficiency in dismounting your own guns, and now you are to try what you can do in dismounting the enemy's guns.

You have, as a trained and organized militia, a great advantage over the volunteers of 1861-62. Our foes are not, thank God, those of our own household. That was war for the life of the Union; this a war for humanity. That for ourselves; this for the oppressed of another race. We could not escape this conflict. Spanish rule has become effete. We dare not say that we have God's commission to deliver the oppressed the world around. To the distant Armenians we could send only the succor of a faith that overcomes death, and the alleviations which the nurse and the commissary can give. But the oppressed Cubans and their starving women and children are knocking at our doors; their cries penetrate our slumbers. They are closely within what we have defined to be the sphere of American influence. We have said: "Look to us, not to Europe," and we can not shirk the responsibility and the dangers of this old and settled American policy. We have, as a nation, toward Cuba the same high commission which every brave-hearted man has to strike down the ruffian who, in his presence, beats

a woman or a child and will not desist. For what, if not for this, does God make a man or a nation strong?

We have disclaimed in the face of the nations of Europe, who are now dividing continents much as hungry boys might divide a melon, that we have a purpose to seize and appropriate Cuba. We go to set her free; to give to her own people that which we have claimed and established for ourselves—the right to set up and maintain a government suitable to their own necessities, controlled by their own suffrages. We covet from her, as from all the nations of America, only the offices of good neighbors and the fair and natural exchange of commerce. We do not deny dominion to Europe in order to seize it for ourselves. But we may justly, I think, in the West Indies, and in the far Eastern sea, where our gallant navy has won so splendid a victory, hold some little unpeopled harbors where our cruising warships may take coal and find a refuge when in stress.

I do not doubt that speedily—though no man can set the times which God plans—that this great work to which the United States has addressed itself will be completely and permanently accomplished. I congratulate you, my young friends, that you are to have a part in it. I challenge your interest and your duty, that you quit yourselves like men; that you enter upon your duties with the seriousness and sense of obligation, which will make you efficient and vic-

torious in your campaign. Let us not forget that there is in all this a moral impulse, and that the soldier who goes from this high impulse of moral courage is the best soldier after all.

Those women send you to the succor of the starving and oppressed women of Cuba. They can not carry the flag into battle, but they bring it to you who can. And to its significance and glory as the national emblem they add the beauty of their love and their charge that you bear it in honor and bring it home in triumph.

# ADDRESS AS GUEST OF HONOR AT THE BANQUET OF THE SOCIETY OF THE CINCINNATI

**At Hathaway Inn, Asbury Park, New Jersey, July 4, 1898**

I recall with pride that this great natal day of our independence is made memorable by the fall of Vicksburg and now again by the capture of the first Spanish stronghold in Cuba. I am one of those who did not see how war could be avoided. When is it possible for an American to see a woman beaten by a brute and not raise a punishing arm? When 200,000 men and women are permitted to starve by the callous cruelty of a barbarous nation, then I believe the power of that nation must be effaced from the islands they have so abused.

Our grievances in 1776 pale by the side of the barbarous cruelties practiced by Spain. Let the Germans and Frenchmen say what they will, this is no war of conquest, but a war for humanity. Europe feels as she never felt before for America. Dewey's

first glorious achievement at Manila set the pace and has made it impossible that any vessel of our navy or any regiment of our army should ever falter in the face of the enemy.

It is time for Europe to understand that the American navy is the match for any navy in the world. The sneers over there are forced, and now we are glad to know that our land forces, who do not fight at 3,000 yards, but look into the very eye of the adversary, have shown around the hills of Santiago that they keep pace with the gallant navy.

In the West an impression prevails that our New York and Eastern millionaires are a dilly dally, washy kind of a set. But we have seen the cowboy and the millionaire dash up the bloody slopes side by side. We have discovered that wealth does not necessarily enfeeble or sap the patriotism of the American heart. Then again we have witnessed the boys who wore the gray in 1861 fighting in the ranks with the boys who wore the blue. I have always felt that when Texas charged with Massachusetts and New Jersey the charge would be invincible.

And now we have another band of hero dead. These fallen soldiers ennoble a nation more than the achievements of commerce. Believe me, gentlemen, out of this war will come increased prosperity and a more united people, possessed of a mighty power that will insure protection and safety for all time to come.

# IN BEHALF OF THE RED CROSS SOCIETY

Long Branch, New Jersey, July 5, 1898

We had heard, before the declaration of war, of the barbarities that were being perpetrated in Cuba. They seemed to pass belief. That quiet recital made by Senator Proctor, of Vermont, in the United States senate, aroused the nation.

I do not think there has been made in any legislative assembly in the world in fifty years a speech that so powerfully affected the public sentiment as that. And yet there was not a lurid adjective in the speech. It was a restrained description of the barbarities practiced chiefly upon women and children by the Spanish rulers in Cuba. Senator Proctor said to me in conversation in New York: "I could not in the senate recite the worst of the atrocities of which I found evidence in Cuba. The treatment of the women among the reconcentrados was too brutal to be spoken of in public."

Could we stand by and not correct those who could be capable of perpetrating them? It seemed to me not. The cries of these starving women and

children penetrated our bed chambers and came to us like ghastly visions of the night, and for one I could not understand why God had made this nation great and strong if it was not for an hour and a work like that. We have said to the whole world this is the exclusive sphere of American influence, and by that declaration we proclaimed our duty to repress such atrocities as were being perpetrated in Cuba.

The war is waged on Red Cross lines, for humanity, for the relief and succor of the starving and the helpless. And how magnificently it has been waged! Can human sympathy be too large, can women's love be too strong for those brave fellows of our army and navy who have added new glory to the standard of the nation and have greatly lifted it in the respect of those countries of Europe that respect only war power?

The comfort of a sheeted bed and what your Western boys used to call a 'boiled shirt' is indescribable to those who have never missed the comforts of their homes, and when there is added the gentle ministration of women, a vision of the open door of heaven seems to come to fever-stricken, wounded men.

# AT THE BANQUET OF THE AMERICAN CHAMBER OF COMMERCE, PARIS, FRANCE

July 4, 1899

The observance of the anniversary of the American declaration of independence in France has a peculiar interest to me. We observe the great event —not in the land immediately affected by it, the dear homeland—but in the land of Lafayette, the land whose sympathetic interest and whose large trust in a poor and struggling people did so much to convert the declared right to be free into the fact of freedom. We may believe—but we can not affirm it—that in the longer end we alone might have won our freedom. In an extremity that seemed to make the result of our appeal to France determinative, she gave us succor—of money to replenish an exhausted treasury, of gallant men to fill our depleted ranks, of ships to break harassing blockades, and to protect our ravaged coasts. Mr. President, the patriotic sire has handed down to his patriotic sons this story of a generous intervention. It is not a forgot-

ten episode—it is told every year in our public schools to hundreds of thousands of our American youth. We have grown strong, but we have not ceased to be grateful.

When America forgets her debt to France she will be unworthy and incapable of an international friendship. Mr. President, we have other friends, but we have none whose friendship involves or implies enmity to France. We are pleased when she is prosperous and grieved when she is troubled.

France has quite naturally adopted for herself the republican form of government which she helped us to establish—and we believe her people have given to their civil institutions their hearty and enduring allegiance. That, Mr. President, is in my opinion the test—a constitution, a form of government, a body of civil institutions, to which the love and allegiance of the people are given. Men may come and men may go, but the government endures. The course of events, the public thought may be influenced by great men, but the anchor holds—they may not supplant the constitution. The man on horseback, the man with a cockade, is not to be feared—the love of the people is set upon something that endures. This, Mr. President, is the security of the United States, and will be the security of every free people that cultivates it.

Our public men, our political parties, often divide upon questions affecting the construction of our

written constitution; but with all our varying thoughts of what it is in this particular or in that, we give our allegiance to it, and not to our leaders. Fortunately for our peace, the American constitution provides a tribunal for the final and unappealable decision of all questions affecting the construction of the constitution, and, at the same time, opens a way by which it may be made to express the popular thought, but one not so easy as to give way to hasty and unconsidered popular feeling.

Washington spoke of the supreme court, as organized under our constitution, at one time as the keystone of our federal arch, and at another as the great pillar that bears up the fabric of our civil institutions. Its decisions have now and then evoked protests from the people, and these—in at least one instance—obtained that wide concurrence of the states which was necessary to make the constitution conform in that particular to the will of the people. But, speaking broadly, this great tribunal has even more than realized Washington's high conception of its value. A tribunal whose decision in all matters between individuals, or between individuals and the state, is accepted, if not with full assent, at least with loyal acquiescence, is essential to social and public tranquillity.

The United States is most favorably situated for the cultivation of peaceful relations with other nations. In the affairs of nations beyond seas, no

question of the balance of power has ever disturbed us. Our neighbors could not contest our supremacy, but we will never use our power to their disadvantage.

If the thought of any general scheme of colonization could now enter the mind of any American statesman, it would surely be corrected by the manifest fact that the islands and the continents have already been divided. The United States is not, I am sure, ambitious to take the crumbs that remain. Her policy always has been, and I am sure we will not depart from it, to preserve the most friendly relations with all the nations of the world, and to extend her commerce, not by force of arms, but by the enticements and advantages of her superior products. She has never failed, whether in Greece, in Armenia, or in South America, to let it be known that she reprobated cruelty and persecution, but she has not felt that she had a commission to police the world.

She would gladly have welcomed the settlement of the Cuban question by the establishment of a humane, just and liberal government of that island under Spain. It was only because she believed that the true purposes of government, the ends for which it is constituted, had been lost sight of there, and because Cuba was almost in sight of her shores, and the cries of her people entered into her sleep, that she intervened. The American people will rejoice

if the Cubans shall establish a free, stable, independent government. We have incurred responsibilities there and in the Philippines, and we will not fail to discharge them—at any cost.

It is too late to debate the question whether it might not have been wiser to have made our campaign in the Philippines purely a naval campaign, or the other question whether destiny or our own choice involved us there. We have assumed responsibilities toward the peaceable people there, toward Spain and toward the world, and we must establish order as a necessary preliminary to the consideration of any question as to the ultimate destiny or disposition of the archipelago.

We are proud of the achievements of our army and navy, and are glad if European misapprehension as to our naval construction and seamanship is removed. We are glad if a truer appreciation of the vast war resources of the United States prevails, glad only because it gives security in the hemisphere in which we are placed, not because it is a threat to Europe.

American diplomacy has been, I think, peculiarly sentimental. Our moral intervention for the oppressed and our later intervention by arms have been in the interest of liberty, not of gain.

It will not be thought unnatural, in spite of all past differences and strifes, if a peculiar friendliness

should be felt by us for those of our language and race across the channel; but no one has suggested, Mr. President, that by reason of this natural and influential fact and motive, either Great Britain or the United States should assume all the animosities and quarrels of the other. The contingency of a general combination of all the powers against one or the other of these nations, threatening its destruction, need not be taken much account of until it arises. Suffice it to say that the friendship of the United States for Great Britain is not enmity to the world. A high sense of what is right and honorable, a due sense of obligation, fairness in our commercial intercourse, and friendliness in our personal intercourse, toward all who will allow us to be friendly, are, I think, the American thought and policy.

Mr. President, the United States now more than ever sympathizes with every practicable suggestion and movement that tends to diminish the influence of arms in the determination of international questions. Arbitration has halted because of the difficulty there has been in finding a purely judicial tribunal, one that would consider international questions with the same indifference to the parties and the same impartiality of judgment which characterize our courts in the trial of questions between individuals. When such a tribunal can be attained and the faith of the nations in the fact of its attain-

ment confirmed, disarmament will be nearer and the grievous burdens which the maintenance of armies imposes upon industry will be lifted. America will hail the glad day.

# AT THE ECUMENICAL MISSIONARY CONFERENCE

## OPENING ADDRESS AS HONORARY CHAIRMAN

Carnegie Hall, New York, April 19, 1900

I count it a great honor—a call to preside over the deliberations of this great body. It is to associate oneself with the most influential and enduring work that is being done in this day of great enterprises.

My assignment is to the chair—not to the speaker's desk. The careful and comprehensive program that has been prepared for the convention will, in its orderly development, bring before you the whole subject of foreign missions in all its aspects. Gentlemen whose learning and special experiences will give not only interest but authority to their addresses, will discuss assigned topics.

We shall have the arithmetic of missions, the muster rolls, the book increase, the paymasters' accounts; some will need these.

We shall have before us some veterans from the mission outposts—men and women who have exhibit-

ed in their work an unsurpassed steadfastness and heroism, whose courage has been subjected to the strain of time. They have been beleaguered; they have known the weariness of those who look for succor. From them we shall hear what the gospel has done for tribes and lands; and, best of all, what it has done for the individual man and woman. These reports will be the consolidated reports of the whole mission work of all the detachments of the evangelical protestant army.

Hours for daily devotional exercises are assigned. The greatest need of the foreign field is a revived, reconsecrated and unified home church. And this conference will be fruitful and successful in proportion as it promotes those ends. There will be, I hope, much prayer for an outpouring of God's spirit.

The gigantic engines that are driving forward a material development are being speeded as never before. The din of the hammer and the axe, and the hum of wheels, have penetrated the abodes of solitude—the world has now few quiet places. Life is strenuous—the boy is started in his school upon the run, and the pace is not often slackened until the panting man falls into his grave.

It is to a generation thus intent—to a generation that has wrought wondrously in the realms of applied science—that God in His Word, and by the preacher, says: All these are worthy only, and in proportion as they contribute to the regeneration of

mankind. Every invention, every work, every man, every nation, must one day come to this weighing platform and be appraised.

To what other end is all this stir among men—this increase of knowledge? That these great agencies may be put in livery and lined up in the halls of wealth to make life brilliant and soft, or become the docile messengers of a counting house or a stock exchange, or the swift couriers of contending armies, or the courtiers who wait in the halls of science to give glory to the man into whose hand God has given the key to one of His mysteries? Do all these great inventions, these rushing intellectual developments, exhaust their ministry in the making of men rich, and the reinforcing of armies and fleets? No.

These are servants, prophets, fore-runners. They will find a herald's voice; there will be an annunciation and a coronation. The first results seem to be the stimulation of a material production and a fiercer struggle for markets. Cabinets, as well as trade chambers, are thinking of the world chiefly as a market house, and of men as "producers" and "consumers." We now seldom have wars of succession, or for mere political dominion. Places are strategic primarily from the commercial standpoint. Colonies are corner stalls in the world's market place. If the product tarries too long in the warehouse, the mill must shut down and discontent will walk the streets.

The propulsion of this commercial force upon cabinets and nations was never so strong as now. The battle of the markets is at its fiercest. The great quest of the nations is for "consumers." The voice of commerce is: "And my hand hath found as a nest the riches of the people: and as one gathereth eggs that are left, have I gathered all the earth."

But with the increase of commerce and wealth the stress of social difficulties is not relieved but rather increased in all of the great nations. The tendency is not to one brotherhood but to many. Work for the willing at a wage that will save the spirit as well as the body is a problem of increasing tangle and intricacy. Competition forces economical devices and names wages that are, in some cases, insufficient to renew the strength expended. It suggests, if it does not compel, aggregations of capital, and these in turn present many threatening aspects. Agencies of man's devising may alleviate, but they can not cure this tendency to division and strife and substitute a drift to peace and unity. Christ in the heart and His gospel of love and ministry in all the activities of life are the only cure.

The highest conception that has ever entered the mind of man is that of God as the father of all men—the one blood—the universal brotherhood. It was not evolved, but revealed. The natural man lives to be ministered unto—he lays his imposts upon others. He buys slaves that they may fan his sleep,

bring him the jeweled cup, dance before him and die in the arena for his sport. Into such a world there came a King, "not to be ministered unto but to minister." The rough winds fanned His sleep; He drank of the mountain brook, and made not the water wine for Himself; would not use His power to stay His own hunger, but had compassion on the multitude. He called them He had bought with a great price no more servants but friends. He entered the bloody arena alone, and dying, broke all chains and brought immortality to light.

Here is the perfect altruism; here the true appraisal of men. Ornaments of gold and gems, silken robes, houses, lands, stocks and bonds—these are tare when men are weighed. Where else is there a scale so true? Where a brotherhood so wide and perfect? Labor is made noble—the King credits the smallest service. His values are relative; He takes account of the per cent. when tribute is brought into His treasury. No coin of love is base or small to Him. The widow's mite he sets in His crown. Life is sweetened; the poor man becomes of account. Where else is found a philosophy of life so sweet and adaptable—a philosophy of death so comforting?

The men who, like Paul, have gone to heathen lands with the message, we "seek not yours but you," have been hindered by those who, coming after, have reversed the message. Rum and other corrupting agencies come in with our boasted civili-

zation, and the feeble races wither before the hot breath of the white man's vices. The great nations have combined to suppress the slave trade. Is it too much to ask that they shall combine to prevent the sale of spirits to men who, less than our children, have acquired the habits of self-restraint? If we must have "consumers," let us give them an innocent diet.

The enemies of foreign missions have spoken tauntingly of the slowness of the work and of its great and disproportionate cost, and we have too exclusively consoled ourselves and answered the criticism by the suggestion that with God a thousand years is as one day. We should not lose sight of the other side of that truth—one day with Him is as a thousand years. God has not set a uniform pace for Himself in the work of bringing in the kingdom of His Son. He will hasten it in His day. The stride of His Church shall be so quickened that commerce will be the laggard. Love shall outrun greed. He exacts faith. He will not answer the demand to show a course of stone in His great cathedral for every thousand dollars given. But it may justly be asked that the administrators of our mission treasuries justify their accounts; that they use a business wisdom and economy; that there be no waste; that the workmen do not hinder each other. The plowing and the sowing must be well done. These may be and should be judged; that is

men's part of the work. But the care of well planted seed is with God. We shall have reports from the harvesters showing that He has given the promised increase—some thirty and some an hundred fold.

Gifts to education are increasingly munificent. University endowments have been swelled by vast single gifts in the United States during the last few years. We rejoice in this. But may we not hope that, in the exposition of the greater needs of the educational work in the mission fields, to be presented in this conference, some men of wealth may find the suggestion to endow great schools in mission lands? It is a great work to increase the candle power of our great educational arc lights, but to give to cave dwellers an incandescent may be a better one.

Not the least beneficent aspect and influence of this great gathering will be found in the Christian union that it evidences. The value of this is great at home, but tenfold greater in the mission field, where ecclesiastical divisions suggest diverse prophets. The Bible does not draw its illustrations wholly from the home or the field, but uses also the strenuous things of life—the race, the fight, the girded soldier, the assault. There are many fields; there are diverse arms; the battle is in the bush and the comrades that are seen are few. A view of the whole army is a good thing; the heart is strengthened by an enlarged comradeship. It gives promise that the

flanks will be covered and a reserve organized. After days in the brush the sense of numbers is lost. It greatly strengthens the soldier and quickens his pace, when he advances to battle, if a glance to right or left reveals many pennons, and a marshaled host, moving under one great leader to execute a single battle plan.

During the Atlanta campaign of our civil war the marching and fighting had been largely in the brush. Sometimes in an advance the commander of a regiment could see no more than half of his own line, while the supports to his right and left were wholly hidden. To him it seemed as if his battalion was making an unsupported assault. The extended line, the reserve, were matters of faith. But one day the advancing army broke suddenly from the brush into a savannah—a long narrow natural meadow—and the army was revealed. From the center, far to the right and left, the distinctive corps, division, brigade and regimental colors appeared, and associated with each of these was the one flag that made the army one. A mighty spontaneous cheer burst from the whole line and every soldier tightened his grip upon his rifle and quickened his step. What that savannah did for that army this world's conference of missions should do for the church.

# AT THE ECUMENICAL MISSIONARY CONFERENCE

## RESPONSE TO WELCOME OF PRESIDENT McKINLEY AND GOVERNOR ROOSEVELT

April 21, 1900

It would have been more appropriate if some one of our distinguished foreign guests had been assigned to the pleasant duty of acknowledging the generous and kindly welcome which has been brought by the president of the United States and by the governor of New York state, to this great conference.

But in behalf of the delegates who, from far and near have gathered in this conference, I return to the president of the United States our most hearty thanks for his presence here to-night. Perhaps some of our foreign guests miss the display, and the regalia, and the sound of trumpets with which the chief executives of foreign nations make their progress and are greeted by their subjects. Could anything be more simple, and when the mind receives the thought, anything more grand and majestic, than the simple presence of an American president here

to-night! We were quite prepared, sir [to President McKinley], because you are known by your fellow-countrymen as a Christian gentleman, that you should extend to these who are assembled the sympathy and fellowship of one who has part with them in the work of setting up God's kingdom in the world; but it was kind, sir, that you should leave those duties that some have recently called simple, and which, at least you and I know, are arduous and exacting to the very extremity of human endurance, and should add to them the labor of travel, that you might witness here on behalf of this Christian nation the sympathy of the whole country with this great foreign missionary movement.

Of course, it was no trouble for Governor Roosevelt to come here. Indeed, I think he rather likes to get away from Albany, and if we may believe those unfailing chroniclers of the truth, whose representatives are here before me, he is not infrequently here for the purpose of having consultations. He availed himself of the few moments that we spent together in the reception room to consult me about a matter, and when I had given him my opinion, he said: "Well, that is what I was going to do anyhow, no matter what you would say," I felt very lucky that I had hit upon the conclusion at which he had already arrived. We are glad to have from him these hearty words of commendation of the cause of missions. I think you can receive as the

truth what he has said. In my observation of him he has a passion for the truth. The only trouble I ever had with managing him—and you know, as he has confessed, how thoroughly I did that—was that it seemed to me he wanted to put an end to all the evil in the world between sunrise and sunset. He was not willing to take as much time sometimes as I thought was necessary in order not to fracture things too much, though we never differed as to the end that was to be attained. He wanted to get there very quickly—I am, perhaps, a little bit too conservative and slow—but it is pleasant to have in his person one known to us all to be so thorough a soldier of righteousness and right-doing; to hear from him to-night his testimony to the work of missions, a work in this country and yet a work among savage tribes, a work identical with that which in a foreign field other missionaries are working out.

Mr. Chairman, these personal greetings are delightful to us, coming from these two great executive officers, but it is not so strange, for were their personal sympathies less fully given to this cause than we know them to be, it would be quite in line with their office that they should come and speak to a Christian assembly here to-night, and encourage the work of spreading Christianity throughout the world. Upon what conservative element is it that the security and peace of our community depend? Out of what do those maxims of life come that make

it decent, that curb passion, that limit selfishness, and that bind men together in common purposes for the security and happiness of communities? It is, indeed, in and out of this sacred word of God that a system of morality has come that makes life sweet and gives to it possibilities that would otherwise be out of thought. It is reported that the aged German chancellor, Prince Hohenlohe, recently said as he looked about over the world, its struggles, and strifes, and distress, and grief, that it seemed to him that that geological era had returned when the saurians, gigantic monsters, walked the earth in their devouring forms. He was addressing, I think, a meeting of scholars, and he turned to scholarship as giving him hope for a world that seemed to be greedy for the destruction of its own members. Ah, my friends, not scholarship, not invention, not any of these noble and creditable developments of our era —not to these, but to the word of God and the church of the Lord Jesus Christ must we turn for the hope that men may be delivered from this consuming greed and selfishness.

"Thy neighbor as thyself"—that second great commandment of our Lord—in that and in the power which it has already obtained, and the power it shall yet obtain over the hearts and minds of men, is our deliverance from this perilous condition of which Prince Hohenlohe spoke. The church is not a revolutionary hooter. The church of God, as it was

started in its way by its Lord and Master, did not stir up rebellion, did not set men against their governing officers. "Tribute to whom tribute is due." Let Caesar have his tribute. Respect for our magistrates as the representatives of the chief magisterial power above, our gospel teaches. And these missionaries going into these foreign lands do not go to disturb the political conditions of the states that they enter. Not at all. They preach no crusade; incite no rebellion, but work by instilling the principles of the gospel of Christ—the doctrine of the parity of man—that God has made of one blood all people—that not titles and not robes, not the outer things at all, but the heart is the seat of judgment and esteem; and this doctrine working its quiet way through the world will yet bring in the Kingdom that is promised. Thy brother as thyself; thy neighbor as thyself. Do we count the growth of the church by our membership roll? Has the gospel done nothing more? Ah, think for a moment, my friends. If you could blot out of your statute books, out of your constitutions, out of your codes of morals, out of your social and family institutions all that is derived from the sacred book, what would there be left to bind society together?

I thank you, and again I thank our distinguished friends in your behalf, for their presence and words of cheer to-night. It is a great thing that this great city, so full of stir, and rush, and business, should

have been so moved upon by this conference as to present to us to-night this magnificent assembly.

May the Lord God, in whose hands are the hearts of all men, turn our hearts to Him, and keep you, Mr. President and Governor Roosevelt, and the rulers of all these nations represented here, in His peace and love.

# AT THE ECUMENICAL MISSIONARY CONFERENCE

## FAREWELL ADDRESS

May 1, 1900

I was designated to speak the opening word when this conference assembled, and the duty is laid upon me to-night to speak the closing word. I do not like to regard this as the end of the conference. We shall have no more lectures; the teachers will be retired; we shall not gather here any more, but it seems to me that we might call these exercises to-night commencement exercises. It is the way the colleges have, you know, when the professors are retired, and the class-rooms are closed, and they have the last meeting. They call it a commencement, and a very appropriate word it is. What has taken place was preparatory, it was fitting out people; it was setting up a mast and springing the sails—a very essential sort of work, but of no great account if it stops there. The ship must spread her sails; she must turn her prow away from the dock; she must throw off her moorings, and with her cargo of merchandise or of human lives, go out upon the sea

on an errand somewhere, to carry something or somebody where it is needed. That is what all this means. And so I like to think of this conference as a school that is holding to-night its commencement; and of these missionaries who have been privileged to come back, either to their native land or at least to one of the homelands of missions, as men who have been taking here a post-graduate course. Of those of us who are delegates, as Christian men and women, we have come here to make reports about the work and to listen to the story of what has been done; not to rest in the pride of it, but to find in it an inspiration of greater things yet to be done.

Do you know, my friends, that these ten days of the ecumenical conference on foreign missions in New York have been days full of significance and import? I have spoken before to many great audiences. I have seen the political spirit in this country kindled to a white heat. I have in this hall addressed great political assemblages, but I never have been associated with a political campaign where the interest was sufficient to fill this hall and three or four overflow halls and churches three times a day for ten days. It is a revelation to the city of New York and to the United States, and to the world. Men have not taken account of these things; they are taking account of them now. There is scarcely a business house or office in New York where they have not been talking of these great meetings.

Well, if it is commencement, then every one who has been privileged to sit here, every one who has any part in these meetings, is under pledge to go out into life with a renewed resolve to do more and to do better for foreign missions than he has ever done before. It has failed of its purpose if it has not touched your heart as it has touched mine, with a deeper sense of obligation to our Lord to help in the work of evangelizing the world. Every one of the mission boards which has been represented here, and every allied board and agency in the cause of missions, home and foreign, ought to feel an impetus and stimulus, and ought to have its treasury filled as never before by the grateful offerings of churches who feel their debt to their Lord.

The great Christian unity, comity—whatever you call it; we had better not puzzle over names—it simply means, my good bishop, [addressing Bishop Doane] that your heart and mine have been drawn together and touched, and we are more than ever before brothers and brethren. I do not think at all that it means that the Presbyterian church is to dissolve itself, or that the Protestant Episcopal church is to abandon its honored and useful place among the Christian workers of the world; not at all. The impression we want to make, that we must make, upon Christians at home and in mission fields, is this, that we have one Prophet, one Lord, one Book.

Why, I do not suppose that any enemy who might

confront the United States would be left in doubt at all in a campaign that the Seventh cavalry and the Twenty-second infantry were fighting for the same flag. And so it ought to be among the Christian churches. We have spent an immense amount of strength very foolishly in discussing the question as to which of the churches has most strictly preserved the apostolic form. Now that is a question that never will be settled in this world, and I think that questions that can never be settled might just as well never be discussed. I have said, that that question will never be settled in this world, and my judgment is—and I say it reverently, too—that it will never be settled in the next, for when the Lord comes in His glory, when He is seen in fulfillment of the Father's mighty promise and the travail of His soul, and the world has come to Him, and every knee has bowed, and every tongue confessed, there will be no consideration of the question as to which of the churches was nearest to the apostolic form. It will be to the faithful ones out of all churches: "Well done, thou good and faithful servant."

Is not this supreme loyalty to the holy catholic church universal—the church whose names are written in heaven? Is not that consistent? Is it impinged upon or hurt by love to my own church? Not at all, any more than the love I bear for the state I live in impairs the sincerity or faithfulness of my allegiance to that great Union of the states whose flag

floats over us all. I do not think a man who does not love his state, the city where he lives, the neighbors who are about him, the home of his father and mother—who has not some special attachments—will ever make a good citizen of the United States. I believe this spirit, this discriminating spirit, this spirit of love and fellowship has been mightily set forward by this great conference. The army will co-operate, the cavalry will not say to the artillery: "We have no need of you," and the artillery will be particularly careful to stop firing when the cavalry charges. Of all the demoralizing incidents that can happen to an army, the worst is to be fired into by mistake—for it can never be done purposely—by some of its own men. We expect fire from the adversary; but when, as has sometimes happened in a campaign in the timber or brush, or in confusion, a supporting column, forgetting that men of their own flag are in front of them, deliver their fire, no troops in the world can stand it; it is demoralization; it is dismay. Brethren, we will take care as never before that we do not stand in the way; that we do not by any possibility deliver a shot that shall find its mark in any of the regiments that march under the banner of our Lord.

And now, to these gentlemen who have so graciously expressed the thanks of the visiting delegates and missionaries, may I be permitted to say in your

behalf that we are all debtors. No one ever received a prophet of God into his house that did not receive more than he gave. You have brought to us these precious women who have come from mission fields; you have brought to us, into our hearts and into our homes, sanctifying and inspiring influences with which the breath that perished is not to be compared. We part with you in sorrow, and yet, bitter as they are, the Christian partings always are cheered by the promise of the great gathering where all who love the Lord shall see each other again. We thank you for your gracious and instructive words; we thank you for the inspiration you have given us; we hope that you have caught from our hearts some of the love we bear you, and that you will go back to the Lord's appointed work stronger for our prayers and for our sympathy.

And now, as we bring this meeting to a close, may I not assure you all that the prayers of the church in America will be offered with a frequency and a fervor they have never had before, and that the pockets and the purses of the American people will be opened with a generosity they have never shown before, to conduct this great world-work—a work which is to bring in the day when the kingdoms of the earth shall become the kingdoms of our Lord?

God bless you all, abide with you in your places, strengthen your hearts, fill them with the converts

that He knows so well how to convert, and give you success in your devoted efforts to make known His name to those who are in darkness.

# REMARKS AS PRESIDING OFFICER AT INDIANAPOLIS RAILROAD CHRISTIAN ASSOCIATION ANNIVERSARY

**On Sunday, Fall of 1900**

I suppose the special work among railroad men did not have its origin in any opinion that railroad men were in greater need of the comforting and strengthening influence of the gospel of Christ than other men. Every man's need is so extreme in that respect that we can not make comparisons. Perhaps rather it has its origin in the fact that those who were managing these things thought that to get hold of railroad men would be to occupy a strong strategic position in the fight for good morals and religion, because you are stirring about so much. Knowledge increases when men go to and fro, and most of you are going to and fro. The railroads themselves are getting to understand that mechanical skill is not hurt any if it is backed up by good moral character—indeed, they are beginning to make some requirement in that direction looking exclus-

ively to the business side of railroad management, not because they are Christians, but because railroad property is safer in the hands of men who are responsible. I fancy that a man who believes that he will not only be applauded by the president of the road, but will have the applause of the King of the Universe—the Lord God—is not less apt to stay in front when a collision is imminent. The man who receives the religious idea that he may please God in running a lathe or an engine—that to do things well and conscientiously, scrupulously, is pleasing not only to the boss of the shop, but to God—is a little more apt to be scrupulous and honest and careful and brave than if he did not believe these things. So that there can be no doubt that the old idea about railroad men, very much like that about the "roustabouts" and mates on the old steamboats—when it was thought that steamboat men could not manage "roustabouts" without an immense amount of profanity—that they must be rough—is giving way. It is not necessary. If you are picking out a brave man now, you can't say: "Always take the man that swears the most." There used to be a thought of that kind in connection with soldiers—that a soldier must be a rough, boisterous, swearing, drinking man. But General Howard and others took that notion out of the minds of men. It is the conscientious, God-fearing soldier that will stay the longest in a hot place.

I am not here to make a speech, but only to express by my presence and these few words my interest in this work and to assume formal direction of the exercises of the afternoon.

# "HAIL COLUMBIA"—A LAND—A SONG—A CLUB

## AT THE COLUMBIA CLUB BANQUET, INDIANAPOLIS

December 31, 1900

My toast has great scope. I do not think of anything that may not, without glaring inappropriateness, be connected with it. A late speaker should always choose such a toast. Where the antecedent orators are addicted to ranging, it is the only way to save an untrodden fence corner with a few clumps of bunch grass—dry but nutritious. I do not speak of flowers, for I foresaw that there would not be enough left for me to make a boutonniere—after our senators had been heard!

Columbia should have been the name of the western hemisphere—the republican half of the world—the hemisphere without a king on the ground—the reserved world, where God sent the trodden spirits of men to be revived; to find, where all things were primitive, man's primitive rights.

Royal prerogatives are plants that require a

walled garden and to be defended from the wild, free growths that crowd and climb upon them. Pomp and laced garments are incongruous in the brush. Danger and hardships are commoners. The man in front is the captain—the royal commission to the contrary notwithstanding. The platoon and volley firing by the word would not do—the open order, one man to a tree, firing at his own will and at a particular savage, was better. Out of this and like calls to do things upon his own initiative the free American was born. He thought he might get along with kings and imperial parliaments if they were benevolent, and did and allowed what he wished, but they were forever doing their own pleasure, as the way of absolutism always is. And so he found it necessary first to remonstrate and then to resist.

Now a remonstrance implies an argument. The acts complained of must be shown to have infringed a right. At first he talked of English rights, but it was not long until he began to talk about human rights. The British parliament was, under British law, supreme—could repeal the *Magna Charta*. He turned to the colonial charters, surely they were irrevocable grants, but the crown courts held otherwise. What kings and parliaments had given, they could take away. And so our fathers were driven to claim divine endowment and to allow it to all men, since God had made all of one blood. To

write the argument otherwise was to divest it of its major premise. The grand conclusion—no king or parliament can rightfully take God's gift of liberty from any man—was thus riveted to the eternal throne itself. We made for our convenience an exception in the case of the black man; but God erased it with a sponge dipped in the white man's blood.

This divine law of individual liberty allows the restraints that are necessary for the general good, but it does not allow either a man or a civil community to exploit for selfish gain another man or another community.

The so-called Anglo-Saxon—and especially the American branch of that great family—should reverently and humbly thank God for the pre-eminent power and influence He has given to it; for organized freedom and for astounding wealth. Verily He hath not dealt so with any other people. The gifts of wealth and power, whether to man or nation, are, however, to be soberly taken and wisely used.

I estimate the gift of the governing faculty to be God's greatest gift to the Anglo-Saxon, and in the constitution of the United States, with its division of powers, its limitations upon the governing departments and its sublime reservations in the interests of individual liberty, I see the highest achievement of that most rare faculty.

I have no argument to make, here or anywhere, against territorial expansion, but I do not, as some

do, look to expansion as the safest or more attractive avenue of national development. By the advantages of abundant and cheap coal and iron, of an enormous surplus of food products, and of invention and economy in production, we are now leading by a nose the original and the greatest of the colonizing nations. Australia and New Zealand loyally send their contingents to South Africa—but Great Britain can not hold the trades of her colonies against American offerings of a better or cheaper product. The Central and South American states, assured of our purpose not only to respect, but to defend, their autonomy, and finding the peace and social order which a closer and larger commercial intercourse with the world will bring, offer to our commerce a field the full development of which will realize the Eldorado. Hail to Columbia, the home of the free, and from which only freedom can go out!

The tune of "Hail Columbia" has for me some unpleasant associations. Before we started on the Atlanta campaign it was proclaimed in orders from division headquarters that the first strain of "Hail Columbia" should be the call of the first brigade. And so it became associated with falling tents and wet and weary marches. When, after much marching and some fighting, we had spread the scant canvas allowed us; had rinsed our only, or our extra shirt, and hung it out, with our wet blankets, to dry;

had found the most adaptable concaves of a bed of poles; had just received the infrequent mail from the hands of our faithful chaplain, and were deep in the long-distance newspaper account of what we had done and were about to do—from some near hilltop the first strain of "Hail Columbia" rang out, and the temptation to substitute another spelling of the first word, or at least to shorten the sound of the "a," was irresistible. The "general" came next, and after an interval, just long enough for the resumption of the wet shirt and the rolling of the blankets, the "assembly," and quickly afterward "to the colors." When we were in line "Hail Columbia" had done its dreadful work, demolished a camp and scattered among its unsightly debris the fragments of a broken command. Then for the first time a human control of this diabolical enginery appeared in the shape of an orderly with a long white envelope stuck in the belt that supported his bloodless saber. Now, I like to know where I am going before I pack my trunk. Is it strange that I still feel an impulse to reach for my overcoat when I hear "Hail Columbia"?

And now, hail to the Columbia club—an association of loyal, liberal-minded Republicans—organized, not to control primaries or to divide the spoils of office, but to maintain the ascendency of Republican principles and to promote friendliness and good will among its members. I recall the occasion and

the circumstances of your organization and the ardent readiness with which you on every occasion rendered honor and service to me as the party's candidate and as your neighbor. These things abide in my memory; they are stored where no vicissitudes of life can disturb them. But they are more than mere pleasant reminiscences. They are bonds of friendship and inspirations to duty.

The decapitation of the ex-president, when the oath of office has been administered to his successor, would greatly vivify a somewhat tiresome ceremonial. And we may some time solve the newspaper problem, what to do with our ex-presidents, in that conclusive way. Until then I hope an ex-president may be permitted to live somewhere midway between the house of the gossip and the crypt of the mummy. He will know, perhaps, in an especial way, how to show the highest honor to the presidential office and the most courteous deference to the president. Upon great questions, however—especially upon questions of constitutional law—you must give an ex-president his freedom or the axe—and it is too late to give me the axe.

Any Democratic friends who may share your hospitality to-night will pardon me for saying to any of them who have cast beguiling looks toward me, that the Democratic party has never been less attractive than now. No plan of reorganization suggests itself to me except that suggested by a wag-

gish lieutenant of my regiment to a captain whose platoons were inverted. He said: "Captain, if I were in your place I would break ranks and have the orderly call the roll!" Perhaps even this hopeful program may fail from an inability to agree as to the roll and as to the orderly.

Gentlemen of the Columbia club, I congratulate you upon the opening of this magnificent club house and thank you with a full heart for your many acts of kindness.

THE END

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